

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

IN RE: Bard IVC Filters Products Liability
Litigation,

No. 2:15-MD-02641-DGC

This Document Relates to:

**PROPOSED AMENDED FINAL
PRETRIAL ORDER**

Debra Tinlin, et al. v. C. R. Bard, Inc., et al.
CV-16-00263-PHX-DGC

(Assigned to the Honorable David G.
Campbell)

The following is the joint Proposed Final Pretrial Order to be considered at the
Final Pretrial Conference set for April 29, 2019.

A. TRIAL COUNSEL FOR THE PARTIES

Include mailing addresses, office phone numbers, fax numbers, and e mail
addresses.

Plaintiffs:

Ramon Rossi Lopez
(admitted *pro hac vice*)
Josh Mankoff
(admitted *pro hac vice*)
LOPEZ MCHUGH LLP
100 Bayview Circle, Suite 5600
Newport Beach, CA 92660
Telephone: (949) 812-5771
Fax: (949) 737-1504
rlopez@lopezmchugh.com

1 Mark S. O'Connor (#011029)
2 BEUS GILBERT PLLC
3 701 N. 44th Street
4 Phoenix, AZ 85008
5 480-429-3000
6 moconnor@beusgilbert.com

7 Julia Reed Zaic
8 (admitted *pro hac vice*)
9 Laura Smith
10 (admitted *pro hac vice*)
11 HEAVISIDE REED ZAIC
12 312 Broadway, Suite 203
13 Laguna Beach, California 92660
14 (949) 715-5228
15 julia@hrzlaw.com
16 laura@hrzlaw.com

17 Wendy R. Fleishman
18 (admitted *pro hac vice*)
19 Daniel E. Seltz
20 (admitted *pro hac vice*)
21 LIEFF CABRASER HEIMANN & BERNSTEIN LLP
22 250 Hudson Street, 8th Floor
23 New York, NY 10013
24 (212) 355-9500
25 wfleishman@lchb.com
26 dseltz@lchb.com

27 Calle M. Mendenhall
28 (admitted *pro hac vice*)
FARRIS, RILEY & PITT LLP
505 N. 20th Street
Birmingham, AL 35203
(205) 324-1212

Ashley Crowell
(admitted *pro hac vice*)
DALIMONTE RUEB LLP
2425 E. Camelback Road, Suite 500
Phoenix, AZ 85019
833-443-7529

Defendants:

James R. Condo (#005867)
SNELL & WILMER L.L.P.
One Arizona Center
400 E. Van Buren, Suite 1900
Phoenix, AZ 85004-2204
Telephone: (602) 382-6000
Fax: (602) 382.6070
jcondo@swlaw.com

1 James F. Rogers
(admitted *pro hac vice*)
2 South Carolina Bar No. 12942
NELSON MULLINS RILEY & SCARBOROUGH LLP
3 The Meridian Building
17th Floor, Main Street
4 Columbia, SC 29201
Telephone: (803) 799-2000
5 Fax: (803) 256-7500
jim.rogers@nelsonmullins.com

6 Richard B. North, Jr.
(admitted *pro hac vice*)
7 Georgia Bar No. 545599
Matthew B. Lerner
(admitted *pro hac vice*)
8 Georgia Bar No. 446986
Elizabeth C. Helm
(admitted *pro hac vice*)
9 Georgia Bar No. 289930
NELSON MULLINS RILEY & SCARBOROUGH LLP
10 Atlantic Station
201 17th Street, NW, Suite 1700
11 Atlanta, GA 30363
Telephone: (404) 322-6000
12 Fax: (404) 322-6050
richard.north@nelsonmullins.com
13 matthew.lerner@nelsonmullins.com
14 kate.helm@nelsonmullins.com

15
16 **B. STATEMENT OF JURISDICTION**

17 1. Jurisdiction is appropriate in this Court as the parties to this action are
18 citizens of different states and Plaintiffs allege that they have suffered damages in an
19 amount exceeding the minimum jurisdictional limits of this Court, 28 U.S.C. § 1332.

20 2. Plaintiffs are citizens of the state of Wisconsin. Defendant C. R. Bard, Inc.
21 (“Bard”) is a citizen of the state of Delaware and is a corporation duly organized and
22 existing under the laws of the state of Delaware, with its principal place in New Jersey.
23 Defendant Bard Peripheral Vascular, Inc. (“BPV”) is a citizen of the state of Arizona, is a
24 wholly owned subsidiary corporation of defendant Bard, and is duly organized and
25 existing under the laws of the state of Arizona with its principal place of business in
26 Arizona.

27 3. Jurisdiction is not disputed.
28

1 **C. STIPULATIONS AND UNCONTESTED FACTS AND LAW**

2 1. The following material facts are admitted by the parties and require no
3 proof:

4 a. The Defendants in this case are C. R. Bard, Inc. and Bard Peripheral
5 Vascular, Inc. (“BPV”). BPV is the wholly-owned subsidiary of C. R. Bard, Inc., the
6 parent company. Throughout this case, including in this pretrial order, the jury
7 instructions and the verdict form, C. R. Bard, Inc. and BPV will be referred to collectively
8 as “Bard” or “Defendants.”

9 b. The product that is the subject of this lawsuit is a Bard Recovery IVC
10 Filter (“Filter”) that was designed, manufactured, marketed and sold by Bard;

11 c. The Filter consists of a main cap to which twelve struts (six “arms”
12 and six “legs”) are attached;

13 d. The Filter is constructed of a nickel-titanium alloy called Nitinol;

14 e. The Filter is a medical device that is implanted in the inferior vena
15 cava (“IVC”), the largest vein in the human body;

16 f. The United States Food and Drug Administration (“FDA”) cleared
17 the Filter for commercial availability through the 510(k) process outlined in the Food,
18 Drug and Cosmetic Act (“FCDA”);

19 g. On November 27, 2002, the FDA cleared the Recovery IVC Filter for
20 commercial availability in the United States for use in patients as a permanent filter. On
21 July 25, 2003, the FDA further cleared the Recovery IVC filter for use in patients as a
22 retrievable device.

23 h. In May, 2005, Plaintiff Debra Tinlin was diagnosed with bilateral
24 DVT and pulmonary embolism.

25 i. Plaintiff Debra Ann Tinlin was under the care of Diana Christel,
26 M.D., who referred Mrs. Tinlin to Dr. Joshua Riebe, a radiologist, to consult with
27 Mrs. Tinlin regarding possible IVC filter placement.
28

1 j. On May 7, 2005, Dr. Joshua Riebe implanted the Filter in
2 Mrs. Tinlin's inferior vena cava.

3 k. On June 10, 2013, Mrs. Tinlin was brought to the Emergency
4 Department at Aurora Bay Care Medical Center in Green Bay, Wisconsin. A CT scan of
5 her chest revealed two fractured, embolized arms of the Filter in the right ventricle.

6 l. On July 30, 2013, David Charles Kress, MD removed an embolized
7 IVC arm in Mrs. Tinlin's right heart ventricle through open heart surgery. Dr. Kress could
8 not find the second embolized arm despite also exploring Mrs. Tinlin's left ventricle.

9 m. On August 7, 2013, a follow-up chest CT demonstrated the filter with
10 only one arm remaining fully attached. Three embolized arms were in various locations of
11 Mrs. Tinlin's pulmonary arteries. The filter remains implanted.

12 2. The following material facts, although not admitted, will not be contested at
13 trial by evidence to the contrary:

14 Plaintiffs are not seeking to recover past or future lost wages as part of their
15 damages.

16 3. The following issues of law are uncontested and stipulated to by the parties:

17 a. Plaintiffs' claims and Bard's defenses are governed by Wisconsin
18 substantive law.

19 b. The law enumerated in any jury instructions stipulated to by the
20 Parties.

21 c. The parties stipulate and agree that they are prohibited from making
22 any reference or argument, or attempting to elicit any evidence in front of the jury
23 suggesting and/or concerning the following topics, unless the issue is first raised with the
24 Court outside the presence of the jury:

25 i. Plaintiffs' receipt of compensation for her medical bills and
26 expenses (collateral source);

27 ii. Other lawsuits or claims against Defendants. Pursuant to the
28 Court's instruction in the *Jones* trial, the names of other cases will not be used, and both

deposition and trial testimony will be referred to as “prior testimony.” The parties also agree not to refer to the number of times a witness has been deposed or testified at trial.

iii. C. R. Bard’s 1994 criminal conviction.

iv. Expert opinion testimony by Mr. or Mrs. Tinlin regarding her medical care and treatment.

v. Mrs. Tinlin’s previous miscarriages.

vi. Mrs. Tinlin’s Stage III chronic kidney disease.

D. CONTESTED ISSUES OF FACT AND LAW

1. Disputed issues of fact.

a. **Design Defect:** Whether the filter implanted in Plaintiff Debra Tinlin had a Design Defect.

i. Plaintiffs’ Contention: Mrs. Tinlin contends that the Filter she received was defective in design, in a condition not contemplated by the ordinary user or consumer which is unreasonably dangerous to the ordinary user or consumer. Mrs. Tinlin further contends nearly all of the arms of the Filter implanted in her fractured after it was properly implanted in her vena cava; that almost all of the Filter struts perforated through her vena cava; that three embolized arms are in various locations of Mrs. Tinlin’s pulmonary arteries; that one arm penetrated the interventricular septum; that one of the struts of the Filter embolized/migrated to the right ventricle of the heart, requiring interventional open heart surgery. The open heart surgery resulted in yet further harm and ongoing injuries to Ms. Tinlin. Ms. Tinlin’s injuries from the filter are ongoing and require ongoing care.

ii. Lastly, foreseeable risks of harm posed by the Filter’s design could have been reduced or avoided by the adoption of a reasonable alternative design by the manufacturer and the omission of such alternative design rendered the product not reasonably safe. Plaintiffs reference and incorporate their Trial Brief on Wisconsin law concerning this issue, filed in the *Hyde* case, *see* Dkt. 12400, and reserve the right to respond to any further trial briefs filed by Bard.

1 iii. Defendants' Contention: Defendants contend that the
2 Plaintiffs' design defect claim is governed by Wis. Stat. 895.047(1). Defendants deny that
3 there is evidence that the requirements of the statute: 1) the foreseeable risks of harm
4 posed by the design of the filter implanted in Mrs. Hyde could have been reduced or
5 avoided by the adoption of a reasonable alternative design by Bard; 2) the omission of the
6 alternative design rendered the filter not reasonably safe and; 3) the filter implanted in
7 Mrs. Hyde was unreasonably dangerous. Defendants have filed a separate Trial Brief on
8 this issue. (Dkt. 16944).

9 b. **Design Defect - Causation:** Whether a design defect of the Filter
10 was a substantial factor in causing the Plaintiffs' alleged injuries and damages.

11 i. Plaintiffs' Contention: Mrs. Tinlin contends that the defective
12 design of her Bard Filter caused or contributed to cause her injuries.

13 ii. Defendants' Contention: Defendants deny that any alleged
14 design defect in the filter caused or contributed to Mrs. Tinlin's injuries. Defendants have
15 filed a separate Trial Brief on this issue. (Dkt. 16944).

16 c. **Negligent Design** – Whether Bard was negligent in the design of the
17 Filter.

18 i. Plaintiffs' Contention: Mrs. Tinlin contends that Bard failed to
19 use that degree of care which is used by ordinary careful persons under the same or
20 similar circumstances in the design and/or testing of the Filter that was implanted in her.
21 Mrs. Tinlin further contends that nearly all of the arms of the Filter implanted in her
22 fractured after it was properly implanted in her vena cava; that almost all of the Filter
23 struts perforated through her vena cava; that three embolized arms are in various locations
24 of Mrs. Tinlin's pulmonary arteries; that one arm penetrated the interventricular septum;
25 that one of the struts of the Filter embolized/migrated to the right ventricle of the heart
26 requiring interventional open heart surgery; and that Defendants' negligence/lack of
27 ordinary care in the design of its Filter, and negligence/lack of ordinary care in testing its
28 Filter caused her injury and damage. The open heart surgery resulted in yet further harm

1 and ongoing injuries to Ms. Tinlin. Ms. Tinlin's injuries from the filter are ongoing and
2 require ongoing care.

3 ii. Defendants' lack of proper testing of the filter is evidence of
4 their failure to act reasonably and use the proper degree of care, as well as their breach of
5 the duty of care. Plaintiffs reference and incorporate their Trial Brief on Wisconsin law
6 concerning this issue, filed in the *Hyde* case, *see* Dkt. 12400, and reserve the right to
7 respond to any further trial briefs filed by Bard.

8 iii. Defendants' Contention: Defendants deny they were negligent
9 in the design of the filter. Defendants have filed a separate Trial Brief on this issue. (Dkt.
10 16944).

11 d. **Negligent Design Causation**: Whether a design defect of the Filter
12 was a substantial factor in causing the Plaintiffs' alleged injuries and damages.

13 i. Plaintiffs' Contention: Mrs. Tinlin contends that Bard's
14 negligence caused or contributed to cause her injuries and damages.

15 ii. Defendants' Contention: Bard denies that any alleged design
16 defect in the filter caused or contributed to Ms. Tinlin's injuries.

17 e. **Strict Liability – Failure to Warn**: Whether Bard failed to
18 adequately warn of the dangers arising from the use of the Recovery filter about which it
19 knew or reasonably should have known.

20 i. Plaintiffs' Contention: Mrs. Tinlin contends that Bard's
21 warnings were inadequate, that those warnings were inadequate when the Recovery filter
22 left Bard's control, and that the inadequate warning was a proximate cause of her injuries.
23 Mrs. Tinlin contends that Bard failed to provide adequate warnings of the Recovery
24 filter's potential dangers and that Bard failed to adequately communicate adequate
25 warnings to Mrs. Tinlin's physicians. Mrs. Tinlin contends that Bard failed to provide an
26 adequate warning of the Recovery filter's unacceptable safety risks or failed to adequately
27 communicate warnings to Mrs. Tinlin's physicians prior to and at the time of implantation
28 and thereafter. Mrs. Tinlin further contends that the Recovery filter implanted in her

1 failed after it was properly implanted, that she suffered injuries as a result of that failure,
 2 that no reasonable doctor would have implanted the Recovery filter had Bard given
 3 adequate warnings, that Mrs. Tinlin's doctors would not have implanted the Recovery
 4 filter had they been adequately warned about the Recovery filter's unacceptable safety
 5 risks and/or would have intervened after implantation of the filter to prevent or mitigate
 6 injury, and, Bard's failure to warn about the safety risks of the Recovery filter and/or
 7 failure to adequately communicate those risks to her doctors resulted in injury and damage
 8 to Mrs. Tinlin. In addition, Mrs. Tinlin contends that Bard's duty to warn is a continuing
 9 one, including the duty to warn both her and her physicians, and the duty to warn
 10 continued after the date of the first sale of the Recovery filter and after implantation of the
 11 Recovery filter in Mrs. Tinlin. Lastly, Mrs. Tinlin contends that Bard failed to meet its
 12 continuing duty to provide adequate warnings and/or adequately communicate those
 13 warnings to Mrs. Tinlin and her physicians.

14 ii. Defendants' Contention: Defendants deny that its warnings
 15 were not adequate. They warned of the very conditions Ms. Tinlin alleges occurred in her
 16 filter. Defendants also contend that, under the learned intermediary rule, any duty to warn
 17 ran to the implanting physician, rather than to the plaintiff herself. Further the implanting
 18 physician did not read the warnings. Defendants have filed a separate Trial Brief on this
 19 issue. (Dkt. 16944).

20 As to Plaintiffs' "continuing duty to warn" claim, despite failing to pursue this
 21 legal theory during litigation, including in their briefing in response to Bard's motion for
 22 summary judgment, Plaintiffs now contend Bard had a post-sale duty to warn in this case.
 23 However, Plaintiffs should be barred from presenting argument on this theory to the jury
 24 or presenting evidence in support because this case does not present the "specific context"
 25 in which the Wisconsin Supreme Court has recognized such a duty and, further, Plaintiffs
 26 cannot meet the elements of such a claim. *See Olsen by Olsen v. Ohmeda, Div. of Boc*
 27 *Grp., Inc.*, 863 F. Supp. 870, 875 (E.D. Wis. 1994), *aff'd sub nom. Wisconsin Health Care*
 28

1 *Liab. Ins. Plan v. Ohmeda, a Div. of BOC Grp., Inc.*, 77 F.3d 485 (7th Cir. 1996);
2 *Kozlowski v. John E. Smith's Sons Co.*, 87 Wis.2d 882, 275 N.W.2d 915 (1979).

3 The Wisconsin Supreme Court has only recognized a post-sale duty to warn in a
4 specific context: when the nature of the industry is such that the product has a “limited
5 market” wherein the manufacturer should know of “all [customers] that own its product.”
6 *Kozlowski*, 87 Wis.2d at 900-01, 275 N.W.2d at 923; *see also Olsen*, 863 F. Supp. at 875.
7 This case does not fall within that narrow context because Bard’s customers are
8 physicians and Bard is unable, because of privacy laws, to know all of the patients who
9 receive and “own” a Bard IVC filter implant. The Plaintiffs also cannot meet a critical
10 element of a post-sale duty to warn claim as articulated by *Kozlowski* because they cannot
11 show that Bard developed a safety feature which could be subsequently added to
12 Plaintiff’s Recovery Filter. *See Olsen*, 863 F. Supp. at 875 (indicating *Kozlowski* required
13 a showing that manufacturer must have developed a subsequent, addable safety feature for
14 the product).

15 Plaintiffs’ rely on *Bushmaker v. A. W. Chesterton Co.*, 09-cv-726-SLC, 2013 WL
16 11079371 (W.D. Wis. Mar. 1, 2013) (*Bushmaker I*) to support their argument regarding
17 the alleged elements of a “continuing duty to warn.” But *Bushmaker I* is wrongly decided.
18 The post-sale duty to warn recognized by the Wisconsin Supreme Court in *Kozlowski* is
19 narrow and requires, *inter alia*, (a) that the manufacturer know of all customers that own
20 its product, (b) that a safety feature be added to the product at issue at some point in time
21 after sale, and (c) that the manufacturer fail to warn it’s known customers of the
22 availability of the safety feature. *See Kozlowski*, 87 Wis.2d at 900-01, 275 N.W.2d at 923
23 *Bushmaker I* greatly expanded the duty recognized in *Kozlowski*, concluding that a post-
24 sale duty to warn may arise—even in the absence of a “limited market,” where the
25 defendant knows “all” of the customers who “own the product,” and when the defendant
26 subsequently added safety feature to the product—if “it was both practically and
27 economically feasible for the defendant to have provided warnings and that any warnings
28 would have been effective in reaching the users of its products.” *Bushmaker I*, 2013 WL

1 11079371 at *8. To reach this conclusion, the court inappropriately relied on *Sharp ex rel.*
 2 *Gordon v. Case Corp.*, 227 Wis.2d 1 (Wis. 1999) and the fact that in *Sharp*, the issue of
 3 post-sale duty to warn was submitted to the jury. *See Bushmaker I*, 2013 WL 11079371 at
 4 *6-7. But *Bushmaker I* acknowledges that it is unclear in *Sharp* whether “the viability of a
 5 post-sale failure to warn theory was ever in dispute.” *Bushmaker I*, 2013 WL 11079371 at
 6 *7.¹ The *Bushmaker I* court also erroneously relied on the *Restatement (Third) of Torts:*
 7 *Products Liability* § 10, even though it recognized “Wisconsin has not adopted § 10.”
 8 *Bushmaker I*, 2013 WL 11079371 at *8. Given the Wisconsin Supreme Court’s binding
 9 precedent in *Kozlowski* that articulates the narrow circumstances in which a post-sale duty
 10 to warn may arise, it was inappropriate for the *Bushmaker I* court to expand Wisconsin
 11 law by relying on a case (*Sharp*) that did not directly address the issue and the
 12 Restatement (Third) § 10, which the Wisconsin legislature has not adopted.²

13 Finally, even if this Court is persuaded that *Bushmaker I* accurately articulated a
 14 post-sale duty to warn under Wisconsin law, Plaintiffs have failed to make the requisite
 15 showing under *Bushmaker I*. Plaintiffs have disclosed no evidence during discovery to
 16 indicate “that it was both practically and economically feasible for the defendant to have
 17 provided warnings and that any warnings would have been effective in reaching the users
 18 of its products.” *Bushmaker v. A. W. Chesterton Co.*, No. 09-CV-726-SLC, 2013 WL
 19 11079371, at *8 (W.D. Wis. Mar. 1, 2013). Such a showing is required *before* a claim for
 20 post-sale duty to warn can be presented to a jury. *See Bushmaker v. A. W. Chesterton Co.*
 21 (*Bushmaker II*), No. 09-CV-726-SLC, 2013 WL 842666, at *3 (“Although the court's
 22 initial review of plaintiff's proffer on Sunday afternoon seemed sufficient to allow him to

23 ¹ The issue of whether a post-sale duty to warn exists was addressed in the Wisconsin
 24 Court of Appeals’ decision in *Sharp*. *See Sharp v. Case Corp.*, 216 Wis.2d 113 (Table
 25 Decision), 573 N.W.2d 899, 1997 WL 757498 (Wis. Ct. App. 1997). But that opinion is
 an unpublished opinion that carries no precedential value. *See Wis. Rules of Appellate*
Procedure, Rule 809.23(3).

26 ² This is in stark contrast to Wisconsin’s clear legislative decision to adopt Restatement
 27 (Third) § 2 by enacting Wis. Stat. § 895.047(1)(a). (*See Bard’s trial brief on this issue*
 28 filed in *Hyde* [Dkt. No. 12358] at 4-6 (describing how Wis. Stat. § 895.047(1)(a) is a
 codification of Restatement (Third) § 2).)

1 proceed on this theory, upon more careful consideration, I am now—and dispositively—
2 persuaded that plaintiff does not have sufficient evidence from which a jury reasonably
3 could conclude that it would have been technically and economically feasible for Philip
4 Carey to have issued post-sale warnings that could have been effectively communicated to
5 and acted upon by the end users of its products.”). Consequently, Plaintiffs should be
6 barred from presenting this legal theory or evidence to support it at trial.

7 f. **Strict Liability – Failure to Warn – Causation:** Whether Bard’s
8 warnings or lack of warnings were a substantial factor in causing the Plaintiffs’ alleged
9 injuries and damages.

10 i. Plaintiffs’ Contention: Mrs. Tinlin contends that Bard’s failure
11 to adequately warn of its dangers arising from its Recovery filter of which Bard knew or
12 reasonably should have known, and/or Bard’s failure to adequately communicate those
13 dangers to Plaintiff and her doctors, caused or contributed to cause her injuries.

14 ii. Defendants’ Contention: Bard denies that any alleged defect
15 in the warnings caused or contributed to Ms. Tinlin’s injuries.

16 g. **Negligent Failure to Warn:** Whether Bard was negligent in the
17 warning provided about the risks of the Recovery filter.

18 i. Plaintiffs’ Contention: Mrs. Tinlin contends that Bard owed
19 her a duty of reasonable care to provide adequate an appropriate warnings as to the
20 complications and dangers of the Recovery filter, Bard breached that duty of care, Bard’s
21 breach was a proximate cause of her injuries, and she suffered damages. Mrs. Tinlin
22 contends that Bard failed to use that degree of care which is used by ordinary careful
23 persons under the same or similar circumstances in providing adequate warnings in
24 communicating adequate warnings regarding the Recovery filter. Mrs. Tinlin further
25 contends that the Recovery filter implanted in her IVC failed; that her doctors would not
26 have implanted the Recovery filter in had they been adequately warned about the
27 Recovery filter’s safety risks and/or would have intervened to prevent or mitigate injury
28 after implantation of the filter; and that Bard’s negligence in the design and/or testing of

1 its filter, and negligent failure to adequately warn of the dangers associated with that filter
2 and/or communicate that warning to her doctors, caused her injury and damage.
3 Additionally, Mrs. Tinlin contends Bard failed to meet its continuing duty to provide
4 adequate warnings and/or adequately communicate those warnings to Mrs. Tinlin and her
5 doctors.

6 ii. Defendants' Contention: Defendants deny they were negligent
7 in providing the warnings about the risks of the filter. Defendants also contend that, under
8 the learned intermediary rule, any duty to warn ran to the implanting physician, rather
9 than to the plaintiff herself. Further, the implanting physician did not read the warnings.
10 Defendants have filed a separate Trial Brief on this issue. (Dkt. 16944).

11 h. **Negligent Failure to Warn – Causation**: Whether any alleged
12 negligence in providing warnings regarding the Recovery filter was a substantial factor in
13 causing the Plaintiff's alleged injuries and damages.

14 i. Plaintiffs' Contention: Mrs. Tinlin contends that Bard's
15 negligence caused or contributed to cause her injuries and damages.

16 ii. Defendants' Contention: Bard denies that it was negligent in
17 providing a warning and that any alleged defect in the warnings caused or contributed to
18 Ms. Tinlin's injuries.

19 i. **Fraudulent Concealment**. Whether Bard had a duty to disclose
20 adverse information about the Recovery filter, but intentionally failed to do so with the
21 intent to deceive, causing Plaintiff's injuries.

22 i. Plaintiffs' contention: Plaintiffs contend that Bard failed to
23 disclose adverse information about the risks and dangers of the Recovery filter, and did so
24 with the intent to deceive. Further, Bard's concealment of those risks and dangers caused
25 Plaintiff her injuries and damages.

26 ii. Defendants' Contention: Defendants deny that they
27 fraudulently concealed any information about the Recovery filter. Defendants further
28 deny that there is any evidence of an intent to deceive Dr. Riebe or Mrs. Tinlin.

Defendants further deny that they had a duty to disclose risks of complications of the Recovery filter compared to other filters. Finally, Defendants deny that any alleged failure to provide information about risks of complications of the Recovery filter was cause of Plaintiffs' alleged injuries and damages.

j. **Compensatory Damages** - Whether Plaintiffs are entitled to damages and, if so, the amount of the damages.

i. Plaintiffs' Contention: Mrs. Tinlin contend she sustained injuries and damages and is entitled to a damage award for the following: medical expenses, such as hospital, doctor, and medicine bills both in the past and in the future; mental and physical pain and suffering in the past, present and future; impairment of bodily or physical faculties in the past, present and future; and disability and disfigurement in the past, present, and future. Plaintiffs also seek loss of consortium damages for Mr. Tinlin.

ii. Defendants' Contention: Defendants contend that Plaintiffs are not entitled to recover compensatory damages.

iii. Mr. Hyde's loss of consortium is an independent cause of action that constitutes a direct injury to the spouse of the injured party. *Kottka v. PPG Indus., Inc.*, 388 N.W.2d 160, 170 (Wis. 1986). However, a spouse's loss of consortium is derivative in the sense that it does not arise unless the other spouse has sustained an injury. *Blunt v. Medtronic, Inc.*, 760 N.W.2d 396, 404 n.12 (Wis. 2009). "As a result, the merits of the loss of consortium claim would be considered by the jury only if they find Defendants liable for one of the Plaintiffs' claims.

k. **Punitive Damages** - Whether Plaintiffs are entitled to an award of punitive damages and, if so, the amount of the award.

i. Plaintiffs' Contention: Mrs. Tinlin contends that there is evidence that Bard acted maliciously towards Plaintiffs and/or in an intentional disregard of the rights of the Plaintiffs. Bard acted with the purpose to disregard the Plaintiffs' rights, or was aware that its acts were substantially certain to result in the plaintiffs' rights

1 being disregarded. It acted deliberately, with actual disregard of the plaintiffs' right to
2 safety, health or life, and acted in a sufficiently aggravated manner to warrant punishment
3 by punitive damages whether or not Bard intended to cause harm or injury to Mrs. Tinlin.
4 The amount of punitive damages will be determined by the jury after considering the
5 seriousness of the hazard to the public, the profitability of the misconduct, the attitude and
6 conduct on the discovery of the misconduct, the degree of the manufacturer's awareness
7 of the hazard and of its excessiveness, the employees involved in causing or concealing
8 the misconduct, the duration of both the improper behavior and its concealment, the
9 financial condition of Bard and the probable effect on the Bard of a particular judgment,
10 and the total punishment the manufacturer will probably receive from other sources.

11 ii. Punitive damages under Wisconsin law are governed by Wis.
12 Stat. § 895.043. Pursuant to section 3, a "plaintiff may receive punitive damages if
13 evidence is submitted showing that the defendant acted maliciously toward the plaintiff or
14 in an intentional disregard for the rights of the plaintiff." Wis. Stat. § 895.043(3). "[T]he
15 purpose of punitive damages is to punish the wrongdoer, and to deter the wrongdoer and
16 others from similar conduct, rather than to compensate the plaintiff for any loss.... [O]nly
17 when an award can be fairly categorized as 'grossly excessive,' in relation to the [S]tate's
18 interests in punishment and deterrence, does it enter the zone of arbitrariness that violates
19 due process." *J.K. v. Peters*, 808 N.W.2d 141, 154 (Wis. Ct. App. 2011).

20 iii. "In order to meet the 'intentional disregard' standard, the
21 defendant's conduct must be (1) deliberate, (2) in actual disregard of the rights of another,
22 and (3) 'sufficiently aggravated to warrant punishment by punitive damages.' *Centrifugal*
23 *Acquisition Corp. v. Moon*, 849 F. Supp. 2d 814, 839 (E.D. Wis. 2012) (citing *Berner*
24 *Cheese Corp. v. Krug*, 312 Wis.2d 251, 752 N.W.2d 800, 814 (2008)). A defendant's
25 conduct giving rise to punitive damages need not be directed at the plaintiff seeking
26 punitive damages. This burden does not require a plaintiff to show that defendant intended
27 to cause harm or injury to the plaintiff. *Wosinski v. Advance Cast Stone Co.*, 901 N.W.2d
28

797, 820-21 (Wi. Ct. App. 2017) (citing *Strenke v. Hogner*, 694 N.W.2d 296 (Wis. 2005)).

iv. “If the finder of fact concludes punitive damages are available and decides to award them, it then determines the amount of punitive damages by considering factors such as the grievousness of the defendant’s acts, the degree of malice involved, the potential damage which might have been done by such acts as well as the actual damage, and the defendant’s ability to pay.” *Centrifugal Acquisition Corp. v. Moon*, 849 F. Supp. 2d 814, 839 (E.D. Wis. 2012) (quoting *Boelter v. Tschantz*, 779 N.W.2d 467, 474 (Wis. Ct. App. 2009)). A plaintiff who establishes a prima facie case for punitive damages may introduce evidence of the defendant’s wealth, and the “judge shall submit to the jury a special verdict as to punitive damages....” Wis. Stat. § 895.043(4).

Other factors which may be considered include:

- A. the seriousness of the hazard to the public;
- B. the profitability of the misconduct;
- C. the attitude and conduct on discovery of the misconduct;
- D. the degree of the manufacturer’s awareness of the hazard and of its excessiveness;
- E. the employees involved in causing or concealing the misconduct;
- F. the duration of both the improper behavior and its concealment;
- G. the financial condition of the manufacturer and the probable effect on the manufacturer of a particular judgment; and
- H. the total punishment the manufacturer will probably receive from other sources.

v. Defendants’ Contention: Defendants deny that Plaintiffs are entitled to recover punitive damages. Punitive damages are not warranted because there is

no evidence that Bard acted maliciously toward Mrs. Tinlin or in an intentional disregard of her rights. Punitive damages are governed by statute, *see* W.S.A. 895.043, and they are imposed for the dual purposes of deterrence and punishment. *See Kimble v. Land Concepts, Inc.*, 845 N.W.2d 395, 406 (Wis. 2014). They may be awarded only when the jury finds by clear and convincing evidence that “the defendant acted maliciously toward the plaintiff or in an intentional disregard of the plaintiff’s rights.” W.S.A. 895.043(3). By enacting this statute, Wisconsin’s Legislature changed the common law and heightened the state-of-mind requirement of a defendant from a “wanton, willful and reckless” disregard for another’s rights to an “intentional disregard” for another’s rights. *Berner Cheese Corp. v. Krug*, 752 N.W.2d 800, 814 (Wis. 2008) (citations and quotations omitted). Indeed, according to the Wisconsin Supreme Court, by passing the punitive damages statute, “the legislature tried to make it harder for plaintiffs to recover punitive damages.” *Strenke*, 694 N.W.2d at 303.

vi. Malicious conduct under the statute means acts that “are the result of hatred, ill will, desire for revenge, or inflicted under circumstances where insult or injury is intended.” *Id.* at 302 (internal quotation marks and citation omitted). Intentional disregard means a person “acts with the purpose to disregard the plaintiff’s rights, or is aware that his or her acts are substantially certain to result in the plaintiff’s rights being disregarded.” *Id.* at 304. “[T]he act or conduct must actually disregard the rights of the plaintiff.” *Id.* “Finally, the act or conduct must be sufficiently aggravated to warrant punishment by punitive damages.” *Id.* at 304–05.

vii. Punitive damages cannot be awarded if the alleged malicious or intentional disregard conduct did not cause the plaintiff’s injury. “Juries are not given license to roam the caverns of their consciences to punish conduct they deem despicable unless a plaintiff can prove that he or she has suffered some actual damage as a result of the conduct.” *Kehl v. Economy Fire & Cas. Co.*, 147 Wis. 2d 531, 534 (Wis. App. 1988). In other words, punitive damages may not be awarded based on conduct that did “not cause or contribute to the plaintiff’s loss.” *Henrikson*, 758 N.W.2d at 211.

viii. The trial court must serve as a “gatekeeper[] before sending a question on punitive damages to the jury.” *Strenke*, 694 N.W.2d at 305. “[A] question on punitive damages may not be given to the jury unless the trial court concludes that a reasonable jury could find from the evidence that entitlement to punitive damages has been proven by the middle burden of proof, clear and convincing evidence.” *Id.* (internal quotation marks and citation omitted). Thus, “punitive damages are not recoverable if the wrongdoer’s conduct is merely negligent.” *Id.* “Only when the conduct is so aggravated that it meets the elevated standard of an ‘intentional disregard of rights’ should a circuit court send the issue to a jury.” *Id.*

ix. A plaintiff is “not entitled to punitive damages as a matter of right.” *Wangen v. Ford Motor Co.*, 294 N.W.2d 437, 458 (Wis. 1980). Thus, even if the issue of punitive damages makes it to a jury, and a jury finds that a defendant’s conduct meets the requisite standard of conduct, a jury does not have to award punitive damages. *Id.* Rather, punitive damages may be withheld at the jury’s discretion; its refusal to award punitive damages is not reviewable. *Id.* But the jury may not award punitive damages unless it has also awarded compensatory damages. *Tucker v. Marcus*, 418 N.W.2d 818, 820 (Wis. 1988).

x. Wisconsin law provides that punitive damages may not exceed twice the amount of compensatory damages recovered by the plaintiff, or \$200,000, whichever is greater. Wis. Stat. § 895.043(6).

1. **Allocation of fault: Whether the jury may consider the negligence of Dr. Joshua Riebe and Dr. Robert Haller and allocate a percentage of negligence to either or both of them.**

i. Defendants’ Contention: The jury is entitled to consider the negligence of both Dr. Joshua Riebe and Dr. Robert Haller and to allocate a percentage of negligence to each of them because their actions caused or contributed to Mrs. Tinlin’s injuries. *See, Connar v. W. Shore Equip. of Milwaukee, Inc.*, 227 N.W.2d 660, 662 (Wis. 1975) (“It is established without doubt that, when apportioning negligence, a jury must

1 have the opportunity to consider the negligence of all parties to the transaction, whether or
 2 not they be parties to the lawsuit and whether or not they can be liable to the plaintiff or to
 3 the other tort-feasors either by operation of law or because of a prior release. . . . At the
 4 requested-special-verdict-stage of a lawsuit, it is immaterial that the entity is not a party or
 5 is immune from further liability[;] the apportionment must include all whose negligence
 6 may have contributed to the arising of the cause of action.”); *Johnson v. Heintz*, 243
 7 N.W.2d 815, 826-827 (Wis. 1976) (“When the harm may be attributed to the concurring
 8 breaches of duties of two or more actors, a similar rationale has stimulated the
 9 development of our comparative negligence special verdict system to facilitate financial
 10 apportionment of the resulting expense on the basis of degree of culpability. . . .
 11 [Nonparties] activity may have been slight in its contribution to the impacts, but under the
 12 evidence here a special verdict embracing all of the actors could have been requested.”)
 13 Defendants have filed a separate Trial Brief on this issue. (Dkt. 16946).

14 ii. Plaintiffs’ Contention: As set forth in Plaintiffs’ Motion *In*
 15 *Limine* No. 1, because Mrs. Tinlin “exercised good faith and due care in the selection of
 16 [her] treating physician[s] . . . under the *Selleck* rule the defendants are liable for the full
 17 amount of damages caused by the aggravation.” *Fouse v. Persons*, 259 N.W.2d 92, 95
 18 (Wis. 1977). Here, Bard has not alleged that Mrs. Tinlin failed to exercise good faith and
 19 due care in selecting her treating physicians, so any alleged negligence by her doctors is
 20 irrelevant, and the jury should not be requested to allocate fault or damages. Instead, the
 21 jury must decide whether Defendants’ actions were a substantial factor in causing the
 22 injuries alleged. WIS-JI-CIVIL 1023; WIS JI-CIVIL 1500.

23 The cases cited by the Defendants are inapposite. *Connar v. W. Shore Equip., Inc.*,
 24 required apportionment only for those “whose negligence may have contributed to the
 25 arising of the cause of action,” 227 N.W.2d 660, 662 (Wis. 1975), while here, any alleged
 26 negligence on behalf of Mrs. Tinlin’s physicians occurred at a later time and did not form
 27 a basis for the causes of action relating to the filter failure. In *Johnson v. Heintz*, the
 28 Wisconsin Supreme Court specifically distinguished between two tortfeasors whose

“actions concur in time . . . to create an injury-producing situation,” and where the actions of others “resulted in distinguishable separate injuries to the same subject.” 243 N.W.2d 815, 826 (Wis. 1976) (citing Prosser, *Law of Torts*, p. 317, sec. 52 (4th ed. 1971)). Where there are separate injuries, or where an original injury is aggravated, as in the malpractice context, “there are separate torts rather than joint liability,” and apportionment is improper. *Id.*

Moreover, even if Wisconsin law provides for the allocation of fault in this case, Bard lacks the required expert opinion that the alleged negligence of Dr. Riebe and Dr. Haller was the proximate cause of and substantial factor in causing any injury, so a directed verdict is proper on this issue.

2. Disputed issues of law

The following was proposed by Plaintiffs as issues of law that are uncontested and stipulated to by the parties, but was not agreed to by Bard:

a. Product Liability (General Aspects)

Wisconsin’s product liability law is a statutory scheme, enacted in 2011. *Forsythe v. Indian River Transp. Co.*, 344 Wis. 2d 520 (Wis. 2012). Common law is not superseded by the 2011 enacted statutory scheme. If pre-2011 common law rulings are not inconsistent with the statute, they stand. “Wisconsin’s 2011 codification of its product liability law generally does not supersede the common law.” *Janusz v. Symmetry Med. Inc.*, 256 F. Supp. 3d 995, 1000–01 (E.D. Wis. 2017).

b. Strict Liability (General Aspects)

Wisconsin Jury Instruction-Civil 3200 sets forth the elements of a strict liability claim as follows: “(1) that the product was in a defective condition unreasonably dangerous; (2) that the product was defective when it left the possession or control of the seller; (3) that the defect was a cause (substantial factor) of the plaintiffs’ injury; (4) that the seller was engaged in the business of selling such products (it does not apply to an isolated or infrequent sale); and (5) that the product was one which the seller expected to and did reach the consumer without substantial change.”

c. **Design Defect (Negligent and Strict Liability)**

Under Wisconsin law, negligent or defective design is generally a jury question. *See, e.g., Tidmore v. Midwest Trailer Sales, Inc.*, 2007 WL 5390049 (Wis. Cir. Ct. 2007). “As the Seventh Circuit has recognized, there is significant overlap between [negligent and strict liability] claims. *See Krien v. Harsco Corp.*, 745 F.3d 313, 317 (7th Cir. 2014) (“[A] claim of strict products liability is much like a negligence claim because it requires proof either that the product was unreasonably dangerous or, what amounts to the same thing, that it was defective.”).

To succeed on a negligence claim, Plaintiffs must prove:

1. the existence of a duty of care on the part of the defendant,
2. a breach of that duty of care,
3. a causal connection between the defendant’s breach of the duty of care and the plaintiffs’ injury, and
4. actual loss or damage resulting from the [breach].

Kilty v. Weyerhaeuser Co., 16-CV-515-WMC, 2018 WL 2464470, at *3–4 (W.D. Wis. June 1, 2018) (citing *Hoida, Inc. v. M & I Midstate Bank*, 2006 WI 69, ¶ 23, 291 Wis. 2d 283, 717 N.W.2d 17); *Forsythe v. Indian River Transp. Co.*, 344 Wis. 2d 520 (Wis. 2012).

To recover on a strict liability design defect claim, the person injured by an allegedly defective product must establish that (1) the foreseeable risks of harm posed by the product’s design could have been reduced or avoided by the adoption of a reasonable alternative design by the manufacturer and the omission of the alternative design renders the product not reasonably safe, (2) the defective condition rendered the product unreasonably dangerous to persons or property, (3) the defective condition existed at the time the product left the manufacturer’s control, (4) the product reached the user or consumer without substantial change in the condition in which it was sold, and (5) the defective condition was a cause of Plaintiffs’ damages. Wis. Stat. § 895.047; WIS JI-CIVIL 3260.1.

1 The consumer-contemplation test is used to determine elements (1) and (2) above.
 2 A product is said to be “defective” when it is in a condition not contemplated by the
 3 ordinary user or consumer which is unreasonably dangerous to the ordinary consumer.
 4 *Green v. Smith & Nephew AHP, Inc.*, 245 Wis.2d 772 (Wis. 2001). Wisconsin uses the
 5 “consumer contemplation” test for product-liability claims. *Green v. Smith & Nephew*
 6 *AHP, Inc.*, 245 Wis. 2d 772 (Wis. 2001); *In re Zimmer Nexgen Knee Implant Products*
 7 *Liab. Litig.*, 218 F. Supp. 3d 700, 723 (N.D. Ill. 2016), *aff’d sub nom. In re Zimmer,*
 8 *NexGen Knee Implant Products Liab. Litig.*, 884 F.3d 746 (7th Cir. 2018) (citing *Green v.*
 9 *Smith & Nephew AHP, Inc.*, 245 Wis. 2d 772, 826, 629 N.W.2d 727, 752 (2001)). Since
 10 the enactment of the Wis. Stat. §895.047 there is no law directly on point addressing the
 11 consumer expectation test, yet the Seventh Circuit interpreting Wisconsin law agreed that
 12 a consumer’s expectation is at least a factor to consider. *In re Zimmer*, 218 F. Supp. 3d
 13 700, 723. Ill. 2016).

14 **d. Damages:**

15 Intervening cause stemming from Mrs. Tinlin’s treatment. *See Fouse v. Persons*,
 16 259 N.W.2d 92, 95 (1977) (citing *Selleck v. Janesville*, 75 N.W. 975 (Wis. 1898)). If the
 17 jury finds Bard negligent, “then the defense of intervening cause is unavailing unless the
 18 court determines as a matter of law that there are policy factors which should relieve the
 19 first actor from liability.” *Stewart v. Wulf*, 271 N.W.2d 79, 86 (Wis. 1978). An intervening
 20 act is a superseding cause only if “the conscience of the court would be shocked if the first
 21 actor were not relieved from liability.” *Rixmann v. Somerset Pub. Sch.*, 266 N.W.2d 326,
 22 334 (Wis. 1978) (internal quotations and citation omitted).

e. **Failure to Warn (Negligent and Strict Liability)³**

To establish a failure to warn claim under Wisconsin law, “whether under a strict liability or negligence theory, plaintiffs must establish four elements: ‘(1) existence of a duty to warn; (2) proof of a failure to warn adequately; (3) proof of causation injury; and (4) actual damages resulted from the injury.’” *Below by Below v. Yokohama Tire Corp.*, 13-cv-529, 2017 WL 570985, at *2 (W.D. Wis. Feb. 13, 2017) (quoting *Lemmerman v. Blue Cross Blue Shield of Wis.*, 713 F. Supp. 2d 791, 811 (E.D. Wis. 2010)). *See also Forst v. SmithKline Beecham Corp.*, 602 F. Supp. 2d 960, 967 (E.D. Wis. 2009) (failure to warn claim requires showing of breach of duty to warn, and that the breach caused the plaintiff’s injuries).

“A manufacturer has a duty to warn about dangers it knows or should know are associated with its products.” *Below by Below*, 2017 WL 570985, at *2 (citing *Lemmerman*, 713 F. Supp. 2d at 811).

³ Wis. Stat. § 895.047(1) provides in relevant part: Liability of manufacturer. In an action for damages caused by a manufactured product based on a claim of strict liability, a manufacturer is liable to a claimant if the claimant establishes all of the following by a preponderance of the evidence:

(a) That the product is defective because it contains a manufacturing defect, is defective in design, or is defective because of inadequate instructions or warnings.... A product is defective because of inadequate instructions or warnings only if the foreseeable risks of harm posed by the product could have been reduced or avoided by the provision of reasonable instructions or warnings by the manufacturer and the omission of the instructions or warnings renders the product not reasonably safe.

(b) That the defective condition rendered the product unreasonably dangerous to persons or property.

(c) That the defective condition existed at the time the product left the control of the manufacturer.

(d) That the product reached the user or consumer without substantial change in the condition in which it was sold.

(e) That the defective condition was a cause of the claimant’s damages.

1 “The duty to warn arises when the manufacturer has, or should have, knowledge of
2 a dangerous use.” *Mohr v. St. Paul Fire & Marine Ins. Co.*, 674 N.W.2d 576, 589 (Wis.
3 App. 2003).

4 The application of the learned intermediary doctrine has not been decided by
5 Wisconsin appellate courts. This Court, collecting prior authority, held that “[t]he
6 Wisconsin Supreme Court has not decided whether to adopt the learned intermediary
7 doctrine, and federal courts applying Wisconsin law are split on the issue.” ECF
8 No. 12007, at 14 n.6. Another Court overseeing multidistrict litigation against Bard
9 regarding other medical devices has come to the same conclusion. *Rodenkirch-Kleindl v.*
10 *C.R. Bard, Inc.*, No. 2:13-CV-26026, 2016 WL 7116144, at *3 (S.D. W. Va. Dec. 6,
11 2016). Other Courts have declined to apply the doctrine. “The court need not and will
12 not apply the ‘learned intermediary’ doctrine in this case. To echo our sister court in the
13 Western District of Wisconsin, ‘this court will not create Wisconsin law without some
14 indication that the state’s highest court would apply the doctrine if given the opportunity
15 to do so.’” *Forst v. SmithKline Beecham Corp.*, 602 F. Supp. 2d 960, 968 (E.D. Wis. 2009)
16 (citing *Peters v. Astrazeneca, LP*, 417 F. Supp. 2d 1051, 1054 (W.D. Wis. 2006)).

17 Unless no reasonable jury, properly instructed, could find negligence, the adequacy
18 of a warning is typically a jury question. See *Kurer v. Parke, Davis & Co.*, 679 N.W. 2d
19 867, 876 (Wis. App. 2004). Bard’s duty to warn is a continuing one, because it was both
20 practically and economically feasible for it to provide adequate warnings after the
21 Recovery filter reached the market. “[I]n order for a duty to warn, post-sale, to exist, the
22 plaintiff must have some evidence ... that it was both practically and economically
23 feasible for the defendant to have provided warnings and that any warnings would have
24 been effective in reaching the users of its products.” *Bushmaker v. A. W. Chesterton Co.*,
25 09-cv-726, 2013 WL 11079371, at *8 (W.D. Wis. Mar. 1, 2013).

26 **f. Punitive Damages**

27 **Plaintiffs’ Contention:** Under Wisconsin law, punitive damages may be awarded in
28 addition to compensatory damages where the jury finds that the defendant acted

maliciously toward the plaintiffs or in an intentional disregard of the rights of the plaintiffs. A defendant acts are malicious when they are the result of hatred, ill will, desire for revenge, or inflicted under circumstances where insult to injury is intended. A defendant acts in an intentional disregard of the rights of the plaintiffs if the defendant acts with a purpose to disregard the plaintiffs' rights or is aware that his or her acts are substantially certain to result in the plaintiffs' rights being disregarded. A defendant's conduct giving rise to punitive damages need not be directed at the specific Plaintiffs seeking punitive damages in order to recover punitive damages and there is no requirement that a defendant intended to cause harm or injury to the plaintiffs. *Strenke v. Hogner*, 279 Wis. 2d 52, 58 (Wis. 2005); WIS JI-CIVIL 1707.2.

A result or consequence is intentional if the defendant acts with a purpose to cause the result or consequence or is aware that the result or consequence is substantially certain to occur from the person's conduct. The result or consequence here is the disregard of rights. *Strenke*, 279 Wis. 2d at 69–70; WIS JI-CIVIL 1707.2

A jury may find an intentional disregard of the plaintiffs' rights if jurors are satisfied that the defendant's act or course of conduct was: (1) deliberate; (2) an actual disregard of the plaintiffs' right to safety, health, or life, a property right or some other right; and (3) sufficiently aggravated to warrant punishment by punitive damages. WIS JI-CIVIL 1707.2.

Defendants' Contention: Defendants disagree with Plaintiffs' analysis of Wisconsin law on strict liability design defect. Defendants further disagree that the appropriate test for product defect is the consumer expectations test. The appropriate test is the risk benefit test under the Restatement Third as adopted by Wisconsin in 2011. As to the strict liability and negligence claims. As to all issues, Defendants incorporate their Trial Briefs addressing the issues under Wisconsin law (Dkt 16944 and 16946).

E. LIST OF WITNESSES

1. Each party understands that it is responsible for ensuring that the witnesses it wishes to call to testify are subpoenaed. Each party further understands that any witness

1 a party wishes to call shall be listed on that party's list of witnesses; the party cannot rely
 2 on the witness having been listed or subpoenaed by another party.

3 2. Many of the parties' summaries state that the witness will testify consistent
 4 with his/her deposition. The parties do not waive any objections, and these descriptions
 5 are subject to the prior rulings by the Court on motions *in limine* and deposition
 6 designations previously submitted to the Court in the MDL and the pending motions *in*
 7 *limine* and the pending motion for summary judgment filed in this case. Counsel agrees
 8 that they and the witnesses will abide by those rulings.

9 **Plaintiffs' Witnesses**

10 1. Plaintiffs reserve the right to call witnesses for rebuttal as needed.

11 2. Witnesses who shall be called at trial (Live and/or by deposition):

12 **Fact Witnesses:**

13 Mrs. Debra Tinlin
 14 c/o Beus Gilbert
 15 701 N 44th Street
 16 Phoenix, Arizona 85008

17 Mrs. Tinlin is the Plaintiff in this action. She will testify regarding her medical care and
 18 treatment, as well as he surrounding and related circumstances; the nature, extent, and
 19 severity of her injuries and suffering; the physical and mental pain, suffering and
 20 discomfort associated with the injuries; and the impact of the injuries on her life,
 21 including without limitation the ongoing emotional and physical impact on her life.
 22 Lastly, she will testify consistent with her deposition given in this matter.

23 Mr. James Tinlin
 24 c/o Beus Gilbert
 25 701 N 44th Street
 Phoenix, Arizona 85008

26 Mr. Tinlin is the Plaintiff's husband. He will testify regarding his observations of
 27 Plaintiff's daily issues and injuries caused by her Filter and the failures of that filter, the
 28 overall impact of the injury on her daily activities and quality of life, and Plaintiff's

1 mental and physical condition before and after the implant of her Filter. He will also
2 testify consistent with his deposition in this matter.

3 Leah Nitke, D.O.
4 2845 Greenbrier Road, Suite 120
5 Green Bay, WI 54311

6 Dr. Nitke will testify regarding her examinations, care, treatment, observations and
7 diagnosis of Plaintiff related to her IVC filter and resulting injuries and complications, as
8 well as the nature and extent of injuries and complications caused by the failure of
9 Plaintiff's Filter. Plaintiff further anticipates Dr. Nitke will testify consistent with her
10 medical records and her deposition taken in this case.

11 Joshua Riebe, M.D.
12 Green Bay Radiology
13 2941 S Ridge Road
14 Green Bay, WI 54304

15 Dr. Riebe will testify regarding his examinations, care, treatment, observations and
16 diagnosis of Plaintiff related to her IVC filter and resulting injuries and complications, as
17 well as the nature and extent of injuries and complications caused by the failure of
18 Plaintiff's Filter. Plaintiff further anticipates Dr. Riebe will testify consistent with his
19 medical records and his deposition taken in this case.

20 Heather Stanko, M.D.
21 Neurology Consultants of Bellin Health
22 725 S Webster Avenue, Suite 201
23 Green Bay, WI 54301

24 Dr. Stanko will testify regarding her examinations, care, treatment, observations and
25 diagnosis of Plaintiff related to her IVC filter and resulting injuries and complications, as
26 well as the nature and extent of injuries and complications caused by the failure of
27 Plaintiff's Filter. Plaintiff further anticipates Dr. Stanko will testify consistent with her
28 medical records and her deposition taken in this case.

Timothy Fisher
c/o Counsel for Bard Peripheral Vascular and C.R. Bard

1 Mr. Fisher was a territory and fields sales manager for Bard. Plaintiff expects that Mr.
2 Fischer has knowledge and would testify at trial regarding the information Bard provided
3 and did not provide to its sales force and to physicians relating to the IVC filters marketed
4 and sold to physicians and hospitals and specifically what information was provided to
5 him and to the sales representatives reporting to him regarding Bard's IVC filters and
6 what information they would and what could have conveyed to physicians who would use
7 those devices. Plaintiff expects that his testimony at trial will be consistent with the
8 testimony at his deposition taken on March 29, 2017, in this MDL

9 Hugh Magee
10 c/o Counsel for Bard Peripheral Vascular and C.R. Bard

11 Mr. Magee was a sales representative for Bard Peripheral Vascular Incorporated
12 ("BPV") at the time of and preceding the implantation of the filter in Plaintiff. Plaintiffs
13 expect that his testimony at trial will be consistent with his deposition taken on October
14 17, 2017, in the Bard IVC Filter MDL.

15 Shari Allen (O'Quinn)
16 c/o Counsel for Bard Peripheral Vascular and C.R. Bard

17 Ms. Allen was the Regulatory Affairs Manager for BPV in 2004 and the Director of
18 Regulatory Affairs and Clinical for BPV in 2005 and 2006. Plaintiff expects that she is
19 knowledgeable regarding the matters that were the subject of her employment with Bard
20 and her depositions taken on November 2, 2010, in *Newton v. C.R. Bard, Inc., et al.*,
21 Superior Court of Arizona, Maricopa County, Case No. CV2009-019232, and October 9,
22 2013, in *Giordano v. C.R. Bard, Inc., et al.*, Superior Court of California, San Diego
23 County, East County Regional Center, Case No. 00069363-CU-PO-EC.

24 William Altonaga, M.D.
25 c/o Counsel for Bard Peripheral Vascular and C.R. Bard

26 Dr. Altonaga was a consultant to and acting Medical Director for C.R. Bard beginning in
27 2001 and into 2004. Plaintiff expects that he is knowledgeable regarding the matters that
28 were the subject of his employment with Bard and his deposition taken on October 22,

1 2013, in *Giordano v. C.R. Bard, Inc., et al.*, Superior Court of California, San Diego
2 County, East County Regional Center, Case No. 00069363-CU-PO-EC.

3 Murray R. Asch, M.D.
4 c/o Lakeridge Health Corporation
5 Director of Interventional Radiology
580 Harwood Ave. S
Oshawa, ON L1S 2J4

6 Dr. Asch is an Interventional Radiologist who was involved in a pilot study to assess the
7 retrievability of the Recovery filter. Plaintiff expects that he is knowledgeable regarding
8 the matters that were the subject of his study and work with Bard, as well as his
9 depositions taken on May 2, 2016, in *In re Bard IVC Filters Prod. Liab. Litig.*, MDL No.
10 2641, United States District Court, District of Arizona (“the Bard IVC Filter MDL”) and
11 January 5, 2011, in *Lindsay, et al. v. C.R. Bard, Inc., et al.*, United States District Court,
12 Southern District of New York, Case No. 1:09-cv-05475-SHS.

13 Robert M. Carr, Jr.
14 c/o Counsel for Bard Peripheral Vascular and C.R. Bard

15 Mr. Carr has been an employee at BPV since 2002; prior to that, he was an employee at
16 NMT working on filters. At BPV, he was the Program Director for Research &
17 Development from 2002 through 2010, Director Research & Development Biopsy from
18 2010 through 2012, Senior Director Research & Development Biopsy & Imaging from
19 2013 through 2014, and Vice President International since 2015. Plaintiff expects that he
20 is knowledgeable regarding the matters that were the subject of his employment with
21 NMT and Bard and his depositions taken on March 18, 2016, and January 19, 2017, in the
22 Bard IVC Filter MDL; May 8, 2007, in *Hutson v. C.R. Bard, Inc., et al.*, Commonwealth
23 of Kentucky, McCracken Circuit Court, Division II, Case No. 06-CI-680; March 4, 2010,
24 in *Campbell v. C.R. Bard, Inc.*, Commonwealth of Kentucky, Scott Circuit Court,
25 Division I, Case No. 08-CI-00541; September 23, 2010, in *Vedas v. C.R. Bard, Inc., et al.*,
26 Superior Court of Arizona, Maricopa County, Case No. CV2010-019655; September 14,
27 2012, in *Albrecht, et al. v. Bard Peripheral Vascular, Inc.*, Circuit Court of Greene
28 County, Missouri, Case. No. 1031-cv10504; April 17, 2013, in *Bouldry, et al. v. C.R.*

1 *Bard, Inc., et al.*, United States District Court, Southern District of Florida, Case No. 12-
2 809-51-CIV-Rosenbaum; October 25, 2013, in *Anderson v. C.R. Bard, Inc., et al.*, United
3 States District Court, Eastern District of New York, Case No. CV11-2632 (DRH);
4 November 5, 2013, in *Giordano v. C.R. Bard, Inc., et al.*, Superior Court of California,
5 San Diego County, East County Regional Center, Case No. 00069363-CU-PO-EC;
6 December 19, 2013, in *Payne v. C.R. Bard, Inc., et al.*, United States District Court,
7 Middle District of Florida, Orlando Division, Case No. 6:11-cv-01582-Orl-37GJK;
8 October 29, 2014, in *Tillman v. C.R. Bard, Inc.*, United States District Court, Middle
9 District of Florida, Jacksonville, Case No. 3:13-cv-222-J-34-JBT; and December 19, 2014,
10 in *Kilver v. C.R. Bard, Inc.*, United States District Court, Central District of Illinois, Case
11 No. 1:13-cv-01219-MMM-JAG.

12 Andrzej Chanduskzko
13 c/o Counsel for Bard Peripheral Vascular and C.R. Bard

14 Mr. Chanduskzko has been an employee of BPV since 2002; prior to that, he was an
15 employee at NMT working on IVC filters. At BPV, he was a Senior Engineer, Research
16 & Development Staff Engineer from 2004 through 2008, Staff Engineer from 2009
17 through 2014, and Principal Engineer since 2015. Plaintiff expects that he is
18 knowledgeable regarding the matters that were the subject of his employment with Bard
19 and NMT, as well as his depositions taken on September 22, 2010, in *Vedas v. C.R. Bard,*
20 *Inc., et al.*, Superior Court of Arizona, Maricopa County, Case No. CV2010-019655, June
21 21, 2013, in *Anderson v. C.R. Bard, Inc., et al.*, United States District Court, Eastern
22 District of New York, Case No. CV11- 2632 (DRH), October 10, 2013, in *Phillips v. C.R.*
23 *Bard, Inc.*, United States District Court, District of Nevada, Case No. 3:12-cv-00344-RCJ-
24 WGC, and April 23, 2015, in *Arnold, et al. v. C.R. Bard, Inc., et al.*, United States District
25 Court, Northern District of Texas, Dallas Division, Case No. 5:13-cv-00609-HLH.

26 David Ciavarella, M.D.
27 c/o Counsel for Bard Peripheral Vascular and C.R. Bard
28

1 Dr. Ciavarella has been Vice President Corporate Clinical Affairs at C.R. Bard since 2004.
2 Plaintiff expects that he is knowledgeable regarding the matters that were the subject of
3 his employment with Bard and depositions taken on March 1, 2011, and August 29, 2012,
4 in *Tyson v. C.R. Bard, Inc., et al.*, Superior Court of Arizona, Maricopa County, Case No.
5 CV2010- 011149, November 12, 2013, in *Giordano v. C.R. Bard, Inc., et al.*, Superior
6 Court of California, San Diego County, East County Regional Center, Case No.
7 00069363-CU-PO-EC, and July 29, 2014, in *Coker v. C.R. Bard, Inc., et al.*, United States
8 District Court, Northern District of Georgia, Atlanta Division, Case No. 1:13-cv-0515.

9 Len DeCant
10 c/o Counsel for Bard Peripheral Vascular and C.R. Bard

11 Mr. DeCant was Vice President Research & Development for BPV from 2002 to 2007.
12 Plaintiff expects that he is knowledgeable regarding the matters that were the subject of
13 his employment with Bard and his deposition taken on May 24, 2016, in the Bard IVC
14 Filter MDL.

15 David Dimmit
16 c/o Counsel for Bard Peripheral Vascular and C.R. Bard

17 Mr. Dimmit is the Vice President and Group Controller at C.R. Bard; Plaintiff expects that
18 he is knowledgeable regarding matters that are/were subject to his employment with Bard
19 and his deposition was taken on January 26, 2017 as to the defendants' financial status,
20 assets, and net worth

21 Mehdi Syed
22 c/o Counsel for Bard Peripheral Vascular and C.R. Bard

23 Mr. Syed is the Vice President of Operations at Becton Dickinson and was designated by
24 Bard to testify on the subject notices for the deposition relating to punitive damages and
25 Bard's financial condition; Plaintiff expects that he is knowledgeable regarding matters
26 that are/were subject to his employment with Bard and his deposition was taken on March
27 2, 2018, as to Defendants' financial status, assets, and net worth.

28 Mary Edwards

1 c/o Counsel for Bard Peripheral Vascular and C.R. Bard

2 Ms. Edwards was Vice President Regulatory Affairs/Clinical Affairs at C.R. Bard from
3 1999 to 2005. Plaintiff expects that she is knowledgeable regarding the matters that were
4 the subject of her employment with Bard and her depositions taken on January 20, 2014,
5 in *Giordano v. C.R. Bard, Inc., et al.*, Superior Court of California, San Diego County,
6 East County Regional Center, Case No. 00069363-CU-PO-EC, and August 19, 2016, in
7 the Bard IVC Filter MDL.

8 Robert Ferrara
9 c/o Counsel for Bard Peripheral Vascular and C.R. Bard

10 Mr. Ferrara was the Bard sales representative who called on and made presentations to
11 Plaintiff's treating physicians during the relevant time period. Plaintiff expects Mr.
12 Ferrara will testify on the subject matter of his employment at Bard, and consistent with
13 his deposition given in this case.

14 Christopher Ganser
15 c/o Counsel for Bard Peripheral Vascular and C.R. Bard

16 Mr. Ganser was Vice President, Regulatory Science at C.R. Bard from 2005 through 2006
17 and Vice President Quality, Environmental Services, & Safety from 2007 through 2010.
18 Plaintiff expects that he is knowledgeable regarding the matters that were the subject of
19 his employment with Bard and his depositions taken on February 28, 2011, in *Newton v.*
20 *C.R. Bard, Inc., et al.*, Superior Court of Arizona, Maricopa County, Case No. CV2009-
21 019232, September 9, 2013, in *Anderson v. C.R. Bard, Inc., et al.*, United States District
22 Court, Eastern District of New York, Case No. CV11-2632 (DRH), and October 11, 2016,
23 in the Bard IVC Filter MDL.

24 David Mickey Graves
25 c/o Counsel for Bard Peripheral Vascular and C.R. Bard

26 Mr. Graves was an Engineer at BPV beginning in 2004 to at least 2014. Plaintiff expects
27 that he is knowledgeable regarding the matters that were the subject of his employment
28

1 with Bard and his deposition taken on February 27, 2014, in *Ocasio, et al. v. C.R. Bard,*
2 *Inc., et al.*, United States District Court, Middle District of Florida, Tampa Division, Case
3 No. 8:13-cv-01962-DSM-AEP.

4 Janet Hudnall
5 c/o Counsel for Bard Peripheral Vascular and C.R. Bard

6 Ms. Hudnall was an employee at BPV from 1998 to 2008, and has recently become
7 employed by Bard again; she held positions as Product Development Engineer, Product
8 Manager, and Marketing Manager. Plaintiff expects that she is knowledgeable regarding
9 the matters that were the subject of her employment with Bard and her depositions taken
10 on November 3, 2010, in *Newton v. C.R. Bard, Inc., et al.*, Superior Court of Arizona,
11 Maricopa County, Case No. CV2009-019232, and November 1, 2013, in *Phillips v. C.R.*
12 *Bard, Inc.*, United States District Court, District of Nevada, Case No. 3:12-cv-00344-RCJ-
13 WGC.

14 Brian Hudson
15 c/o Counsel for Bard Peripheral Vascular and C.R. Bard

16 Mr. Hudson was an employee at BPV from 1999 to 2012; he held positions as Quality
17 Engineer, Senior Risk Manager, and Associate Director Quality Assurance. Plaintiff
18 expects that he is knowledgeable regarding the matters that were the subject of his
19 employment with Bard and his depositions taken on January 21, 2011, in *Tyson v. C.R.*
20 *Bard, Inc., et al.*, Superior Court of Arizona, Maricopa County, Case No. CV2010-011149,
21 and January 17, 2014, in *Giordano v. C.R. Bard, Inc., et al.*, Superior Court of California,
22 San Diego County, East County Regional Center, Case No. 00069363-CU-PO-EC.

23 Krishna Kandarpa, M.D.
24 National Institute of Health
25 Bethesda, MD 20892

26 Dr. Kandarpa was the Medical Monitor for Bard's EVEREST Retrievability Study.
27 Plaintiff expects he is knowledgeable about and will provide testimony concerning the
28 EVEREST Study and all documents related to the same, including his observations, his
concerns and findings, complications and adverse events that occurred during the study,

1 design and purpose of the study, his recommendations to and interactions with Bard and
2 its representatives/agents based on the study, and all other related facts and circumstances.

3 Sanjeeva Kalva, M.D.
4 c/o Beus Gilbert
5 701 N 44th Street
6 Phoenix, Arizona 85008

7 Dr. Kalva is an Interventional Radiologist and a key opinion leader on IVC filters.
8 Plaintiff expects that he is knowledgeable regarding the matters that were the subject of
9 his interactions with Bard, his experience with its filter, and deposition given in this
10 litigation.

11 Thomas Kinney, MD, MSME
12 c/o Beus Gilbert
13 701 N 44th Street
14 Phoenix, Arizona 85008

15 Dr. Kinney is an Interventional Radiologist. He is expected to testify about his experience
16 with IVC filters and will testify consistent with his expert report and deposition given in
17 this litigation. He is also disclosed as an expert, below.

18 Bill Little
19 c/o Counsel for Bard Peripheral Vascular and C.R. Bard

20 Mr. Little was Vice President of Global Marketing at BPV from 2008 through 2011.
21 Plaintiff expects that he is knowledgeable regarding the matters that were the subject of
22 his employment with Bard and his deposition taken on July 21, 2016, in the Bard IVC
23 Filter MDL.

24 Patrick MacDonald
25 c/o Counsel for Bard Peripheral Vascular and C.R. Bard

26 Mr. MacDonald is a sales representative and sales trainer at Bard. Plaintiff expects that he
27 is knowledgeable regarding the matters that were the subject of his employment with Bard
28 and his deposition taken on July 29, 2016, in Austin v. C.R. Bard, in 17th Judicial Circuit,
Broward County Florida, Case No. 15-008373 and the Bard IVC Filter MDL

Chad Modra

1 c/o Counsel for Bard Peripheral Vascular and C.R. Bard

2 Mr. Modra was Director Quality Assurance and Vice President Quality Assurance at BPV
3 from 2011 through 2014. Plaintiff expects that he is knowledgeable regarding the matters
4 that were the subject of his employment with Bard and his depositions taken on March 28,
5 2013, in *Phillips v. C.R. Bard, Inc.*, United States District Court, District of Nevada, Case
6 No. 3:12-cv-00344-RCJWGC, June 6, 2014, in *Ocasio, et al. v. C.R. Bard, Inc., et al.*,
7 United States District Court, Middle District of Florida, Tampa Division, Case No. 8:13-
8 cv-01962-DSM-AEP, and December 15, 2015, and January 20, 2016, in the Bard IVC
9 Filter MDL.

10 Daniel Orms
11 c/o Counsel for Bard Peripheral Vascular and C.R. Bard

12 Mr. Orms was a sales representative and district manager at Bard from 1997 through 2012.
13 Plaintiff expects that he is knowledgeable regarding the matters that were the subject of
14 his employment with Bard and his deposition taken on August 16, 2016, in *Austin v. C.R.*
15 *Bard*, in 17th Judicial Circuit, Broward County Florida, Case No. 15-008373 and the Bard
16 IVC Filter MDL.

17 Frederick B. Rogers, M.D.
18 c/o Counsel for Bard Peripheral Vascular and C.R. Bard

19 Dr. Rogers was the author of a large study establishing that IVC filters do not reduce the
20 rate of PE in trauma patients. Plaintiff further expects that he is knowledgeable regarding
21 the matters that were the subject of his deposition taken on July 18, 2017, in *In re: Bard*
22 *IVC Filters Products Liability Litigation*, No. MD-15-02641-PHX-DGC, and will testify
23 consistent with that deposition. He is also disclosed as an expert, below.

24 Gin Schulz
25 c/o Counsel for Bard Peripheral Vascular and C.R. Bard

26 Ms. Schulz was Vice Present Quality Assurance at BPV from 2005 to 2011 and in the
27 Quality Assurance department at C.R. Bard since 2011, including as Vice President
28

1 Quality Assurance. Plaintiff expects that she is knowledgeable regarding the matters that
2 were the subject of her employment with Bard and her depositions taken on September 13,
3 2013, in *Anderson v. C.R. Bard, Inc., et al.*, United States District Court, Eastern District
4 of New York, Case No. CV11-2632 (DRH), and January 30, 2014, in *Phillips v. C.R.*
5 *Bard, Inc.*, United States District Court, District of Nevada, Case No. 3:12-cv-00344-RCJ-
6 WGC.

7 Carol Vierling
8 c/o Counsel for Bard Peripheral Vascular and C.R. Bard

9 Ms. Vierling was the Director, Regulatory Affairs at BPV from 1994 through 2002.
10 Plaintiff expects that she is knowledgeable regarding the matters that were the subject of
11 her employment with Bard and her deposition taken on May 11, 2016, in the Bard IVC
12 Filter MDL.

13 Alison Walsh
14 c/o Counsel for Bard Peripheral Vascular and C.R. Bard

15 Ms. Walsh was a sales representative at Bard from 2003 through 2006. Plaintiff expects
16 that she is knowledgeable regarding the matters that were the subject of her employment
17 with Bard and her deposition taken on January 23, 2014, in the *Phillips v. C.R. Bard, Inc.*,
18 United States District Court, District of Nevada, Case No. 3:12-cv-00344-RCJ-WGC

19 Steve Williamson
20 c/o Counsel for Bard Peripheral Vascular and C.R. Bard

21 Mr. Williamson has been President at BPV since 2012. Plaintiff expects that he is
22 knowledgeable regarding the matters that were the subject of his employment with Bard
23 and his deposition taken on September 7, 2016, in the Bard IVC Filter MDL.

24 Natalie Wong
25 c/o Counsel for Bard Peripheral Vascular and C.R. Bard

26 Ms. Wong has been an employee of BPV since 2004; she has held positions as Quality
27 Engineer, Field Assurance Quality Engineering Manager, Quality Engineering Manager,
28 and Senior Quality Engineer, New Product Development. Plaintiff expects that she is

1 knowledgeable regarding the matters that were the subject of her employment with Bard
 2 and her depositions taken on September 21, 2010, in *Vedas v. C.R. Bard, Inc., et al.*,
 3 Superior Court of Arizona, Maricopa County, Case No. CV2010-019655, and October 18,
 4 2016, in the Bard IVC Filter MDL.

5 John Worland, M.D.
 6 21605 Crestone Needles Drive
 Parker, Colorado 80138

7 Mr. Worland is an interventional radiologist in Aurora, Colorado at the Medical Center of
 8 Aurora. Plaintiff expects that he is knowledgeable regarding his experience with IVC
 9 filters and subject matters discussed at his deposition taken on March 16, 2011, in
 10 *Bloomquist v. C.R. Bard, et al.* in United States District Court, Western District of
 11 Missouri, Case. No. 09-CV-5086-SW-RED.

12 **Expert Witnesses:**

13 Rebecca Betensky, Ph.D.
 14 655 Huntington Avenue
 Building II, Room 421
 15 Boston, MA 01225

16 Dr. Betensky is a biostatistician. Dr. Betensky is expected to testify about her analysis
 17 and data relating to complication rates of Bard's defective IVC filter, various design
 18 failure modes effects analysis documents, and about various filter migration test results.
 19 Dr. Betensky will testify consistent with her deposition and expert report. Further, Dr.
 20 Betensky will testify about the foundation and bases for her opinions, including her
 21 review of medical and scientific literature, Bard documents, and other information she has
 22 reviewed and relied upon. Dr. Betensky will also respond to opinions and testimony of
 23 defense experts.

24 Darren R. Hurst, M.D.
 c/o Beus Gilbert
 25 701 N 44th Street
 Phoenix, Arizona 85008

26 Dr. Hurst is Plaintiff's vascular and interventional radiologist expert. Dr. Hurst is
 27 expected to testify as to the Defendants' liability and the design problems associated with
 28 the IVC filter, causation, and damages. Dr. Hurst will testify consistent with his

1 deposition and expert report in this case. Further, Dr. Hurst will testify about the
2 foundation and bases for his opinions, including his review of medical and scientific
3 literature, Bard documents, and other information he has reviewed and relied upon.
4 Dr. Hurst will also provide foundational testimony for Plaintiff's medical illustrations and
5 animations. Dr. Hurst will also respond to opinions and testimony of defense experts.

6 David A. Kessler, M.D.
7 c/o Beus Gilbert
8 701 N 44th Street
9 Phoenix, Arizona 85008

10 Dr. Kessler is a medical doctor and former FDA commissioner. Dr. Kessler is expected to
11 testify consistent with his expert report and depositions. Further, Dr. Kessler will testify
12 about the foundation and bases for his opinions, including his review of medical and
13 scientific literature, Bard documents, and other information he has reviewed and relied
14 upon. Plaintiff also anticipates that Dr. Kessler will also respond to opinions and
15 testimony of defense experts.

16 Suzanne Parisian, M.D.
17 MD Assist, Inc.
18 7117 N. 3rd St.
19 Phoenix, AZ 85020

20 Dr. Parisian is a medical doctor and former FDA employee. Dr. Parisian is expected to
21 testify consistent with her expert report and depositions. Further, Dr. Parisian will testify
22 about the foundation and bases for her opinions, including his review of medical and
23 scientific literature, Bard documents, and other information she has reviewed and relied
24 upon. Plaintiff also anticipates that Dr. Parisian will also respond to opinions and
25 testimony of defense experts.

26 Thomas Kinney, MD, MSME
27 c/o Beus Gilbert
28 701 N 44th Street
Phoenix, Arizona 85008

Dr. Kinney is an interventional radiology expert for Plaintiff. Dr. Kinney is expected to
testify about the general liability of the Bard defendants. Dr. Kinney will further testify
consistent with his deposition and expert report in this litigation. Further, Dr. Kinney will

1 testify about the foundation and bases for his opinions, including his review of medical
2 and scientific literature, Bard documents, and other information he has reviewed and
3 relied upon. Dr. Kinney will also respond to opinions and testimony of defense experts.

4 Robert McMeeking, Ph.D.
5 c/o Beus Gilbert
6 701 N 44th Street
Phoenix, Arizona 85008

7 Dr. McMeeking is a materials and mechanical engineer and is experienced in safety,
8 reliability and effectiveness of biomedical implant devices. Dr. McMeeking is expected
9 to testify that the design of the Recovery filter is inherently dangerous and prone to
10 numerous failure modes. There are safer alternative designs which were available to
11 Defendants. Dr. McMeeking is expected to testify and describe alternative designs of
12 IVC filters including the Simon Nitinol filter, which are feasible and reduce the tendency
13 to tilt, perforate, migrate, fracture and otherwise fail.

14 Dr. McMeeking is expected to testify about his analyses and calculations which
15 predict stress, strain, and strength of the Bard Recovery vena cava filter. He will explain
16 why the filter testing conducted by Defendants was inadequate and misleading. Further,
17 Dr. McMeeking will testify about the foundation and bases for his opinions, including his
18 review of medical and scientific literature, Bard documents, and other information he has
19 reviewed and relied upon. Dr. McMeeking is also expected to testify about the following:

- 20 • The Recovery filter has a design that makes it prone to migration, tilting and
21 perforation/penetration through the vena cava.
- 22 • The driving force for tilting is the relaxation of strain energy in the filter.
- 23 • Tilting allows arms and legs to spread out, thereby reducing the strain and
24 strain energy in the filter.
- 25 • The filter design makes it probable that limbs will perforate into the wall of
26 the vena cava.
- 27 • Pressure applied from the arms and legs of the filter provide the driving
28 forces that lead to penetration in the vena cava walls.

- 1 • The filter design causes increased pressure from the arms and legs against
- 2 the vena cava wall.
- 3 • The relatively sharp ends of some arms and legs of the IVC filter can press
- 4 aggressively into the vena cava wall thereby contributing to higher pressure
- 5 to the vena cava wall when the filter becomes severely tilted.
- 6 • A severely tilted filter will likely perforate the vena cava wall.
- 7 • The association between failure modes found with Bard filters.

8 Dr. McMeeking may also respond to opinions and testimony of defense experts. In
9 addition, Plaintiff anticipates that Dr. McMeeking will testify consistent with his expert
10 reports and depositions given to date.

11 Mark Moritz, M.D.
12 c/o Counsel for Bard Peripheral Vascular and C.R. Bard

13 Dr. Moritz gave general expert opinions on behalf of Bard in the MDL, as well as case
14 specific opinions in at least one of the MDL bellwethers. Plaintiff expects that he is
15 knowledgeable regarding the matters that were the subject of his deposition taken on July
16 18, 2017, in *In re: Bard IVC Filters Products Liability Litigation*, No. MD-15-02641-
17 PHX-DGC, and will testify consistent with that deposition.

18 Derek David Muehrcke, M.D.
19 c/o Beus Gilbert
20 701 N 44th Street
 Phoenix, Arizona 85008

21 Dr. Muehrcke is a cardiothoracic and vascular surgeon. Dr. Muehrcke is expected to
22 testify about the liability of the Bard defendants as well as causation and damages caused
23 by the defective IVC filter. Dr. Muehrcke will testify consistent with his deposition and
24 expert report in this case. Further, Dr. Muehrcke will testify about the foundation and
25 bases for his opinions, including his review of medical and scientific literature, Bard
26 documents, and other information he has reviewed and relied upon. Dr. Muehrcke will
27 also provide foundational testimony for Plaintiff's medical illustrations and animations.
28 Dr. Muehrcke will also respond to opinions and testimony of defense experts.

1 Frederick B. Rogers, M.D.
2 c/o Counsel for Bard Peripheral Vascular and C.R. Bard

3 Dr. Rogers gave general expert opinions on behalf of Bard in the MDL, as well as case
4 specific opinions in at least one of the MDL bellwethers. He was the author of a large
5 study establishing that IVC filters do not reduce the rate of PE in trauma patients.

6 Plaintiff further expects that he is knowledgeable regarding the matters that were the
7 subject of his deposition taken on July 18, 2017, in *In re: Bard IVC Filters Products*
8 *Liability Litigation*, No. MD-15-02641-PHX-DGC, and will testify consistent with that
9 deposition.

10 J. Matthew Sims, MC, MS
11 c/o Beus Gilbert
12 701 N 44th Street
Phoenix, Arizona 85008

13 Mr. Sims is a Vocational Economist expert for the Plaintiff. He will provide testimony
14 and opinion as to the present value of the life care plan for Plaintiff and projection of costs
15 prepared by Plaintiff's Medical Services Consultant and Life Care Planner expert, Lora
16 White. He will testify consistent with his expert report and deposition given in this case.

17 Moni Stein, MD
18 c/o Counsel for Bard Peripheral Vascular and C.R. Bard

19 Dr. Stein gave general expert opinions on behalf of Bard in the MDL, as well as case
20 specific opinions in at least one of the MDL bellwethers. Plaintiff expects that he is
21 knowledgeable regarding the matters that were the subject of his deposition taken on July
22 31, 2017 in *In re: Bard IVC Filters Products Liability Litigation*, No. MD-15-02641-
23 PHX-DGC, and will testify consistent with that deposition.

24 Michael Streiff, M.D.
25 c/o Beus Gilbert
26 701 N 44th Street
Phoenix, Arizona 85008

27 Dr. Streiff is a hematology expert for Plaintiff. Dr. Streiff is expected to testify about the
28 general liability of the Bard defendants, including without limitation the risk versus

1 benefit analysis associated with the use of IVC filters. Dr. Streiff will further testify
2 consistent with his deposition and expert report in this litigation. Further, Dr. Streiff will
3 testify about the foundation and bases for his opinions, including his review of medical
4 and scientific literature, medical and scientific literature he has authored and the
5 associated research, Bard documents, and other information he has reviewed and relied
6 upon. Dr. Streiff will also respond to opinions and testimony of defense experts.

7 Lora K. White, RNBC, BSN, CCM, CNLCP
8 c/o Beus Gilbert
9 701 N 44th Street
Phoenix, Arizona 85008

10 Ms. White is a Medical Services Consultant and Life Care Planner expert for the Plaintiff.
11 She prepared a life care plan for Plaintiff and projection of costs for the same arising from
12 the injuries and damages caused by the failure of Plaintiff's Bard Filter. She will testify
13 consistent with her expert report and deposition given in this case.

14 **3. Witnesses who may be called at trial (Live and/or by deposition):**

15 Brett Baird
16 c/o Counsel for Bard Peripheral Vascular and C.R. Bard

17 Mr. Baird was a Senior Product Manager for BPV in 2007 and a Marketing Manager for
18 BPV from 2008 through 2011. Plaintiff expects that he is knowledgeable regarding the
19 matters that were the subject of his employment with Bard and his deposition taken on
20 June 9, 2016, in the Bard IVC Filter MDL.

21 Brian Barry
22 c/o Counsel for Bard Peripheral Vascular and C.R. Bard

23 Mr. Barry was the Vice President Regulatory/Clinical Affairs for Bard Access Systems
24 from 1994 through 1997, Vice President Corporate Regulatory Affairs for C.R. Bard from
25 1997 through 2000, and Vice President of Regulatory Affairs and Clinical Affairs for C.R.
26 Bard from 2003 to 2007. Plaintiff expects that he is knowledgeable regarding the matters
27 that were the subject of his employment with Bard and his deposition taken on January 31,
28

1 2014, in *Jones v. C.R. Bard, Inc.*, United States District Court, Northern District of Texas,
2 Dallas Division, Case No. 3:13-cv-00599-K.

3 Kevin Boyle
4 c/o Counsel for Bard Peripheral Vascular and C.R. Bard

5 Mr. Boyle was Vice President of Research & Development at BPV from 2013 through
6 2015. Plaintiff expects that he is knowledgeable regarding the matters that were the
7 subject of his employment with Bard and his deposition taken on February 2, 2017, in the
8 Bard IVC Filter MDL.

9 Gary S. Cohen, M.D.
10 Temple University
11 Medicine Education and Research Building (MERB)
3500 N. Broad Street
Philadelphia, PA 19140

12 Dr. Cohen is an Interventional Radiologist at Temple University Hospital. He was a
13 consultant and key opinion leader for Bard on IVC filters. Plaintiff expects that he is
14 knowledgeable regarding the matters that were the subject of his deposition taken on
15 January 25, 2017, in the Bard IVC Filter MDL.

16 Robert Cortelezzi
17 c/o Counsel for Bard Peripheral Vascular and C.R. Bard

18 Mr. Cortelezzi was an employee at BPV from approximately 1990 to 2008; he was a
19 Regional Manager from 2004 through 2008. Plaintiff expects that he is knowledgeable
20 regarding the matters that were the subject of his employment with Bard and his
21 deposition taken on November 11, 2016, in the Bard IVC Filter MDL.

22 Thomas Ferari
23 c/o Counsel for Bard Peripheral Vascular and C.R. Bard

24 Mr. Ferari was an Engineer at BPV. Plaintiff expects that he is knowledgeable regarding
25 the matters that were the subject of his employment with Bard and his depositions taken
26 on October 20, 2010, in *Vedas v. C.R. Bard, Inc., et al.*, Superior Court of Arizona,
27 Maricopa County, Case No. CV2010- 019655, and all related cross-noticed cases and
28

1 April 2, 2014, in *Coker v. C.R. Bard, Inc., et al.*, United States District Court, Northern
2 District of Georgia, Atlanta Division, Case No. 1:13-cv-0515.

3 Kay Fuller
4 308 Meadowlark Rd
Santa Ynez, CA 93460

5 Ms. Fuller was Senior Regulatory Specialist at BPV from 1999 through 2004. Plaintiff
6 expects that she is knowledgeable regarding the matters that were the subject of her
7 employment with Bard and her depositions taken on November 9, 2010, in *Newton v. C.R.*
8 *Bard, Inc., et al.*, Superior Court of Arizona, Maricopa County, Case No. CV2009-019232,
9 and January 11, 2016, in the Bard IVC Filter MDL.

10 Brooke Gillette
11 c/o Counsel for Bard Peripheral Vascular and C.R. Bard

12 Ms. Gillette was sales representative at C.R. Bard from 2003 through 2006. Plaintiff
13 expects that she is knowledgeable regarding the matters that were the subject of her
14 employment with Bard and her deposition taken on July 11, 2014, in the *Rackliff v. C.R.*
15 *Bard, et al.*, Superior Court of Arizona, Maricopa County, Case no. CV2011-021206.

16 Holly Glass
c/o Counsel for Bard Peripheral Vascular and C.R. Bard

17 Ms. Glass was Vice President Government & Public Relations at C.R. Bard from 2002
18 through 2009. Plaintiff expects that she is knowledgeable regarding the matters that were
19 the subject of her employment with Bard and her deposition taken on September 23, 2016,
20 in the Bard IVC Filter MDL.

21 Jason Greer
22 c/o Counsel for Bard Peripheral Vascular and C.R. Bard

23 Mr. Greer was a Sales Representative and then District Manager at BPV from 1999
24 through 2007. Plaintiff expects that he is knowledgeable regarding the matters that were
25 the subject of his employment with Bard and his depositions taken on June 20, 2010, in
26 *Newton v. C.R. Bard, Inc., et al.*, Superior Court of Arizona, Maricopa County, Case No.
27 CV2009-019232, October 22, 2010, in *Vedas v. C.R. Bard, Inc., et al.*, Superior Court of
28 Arizona, Maricopa County, Case No. CV2010-019655, August 11, 2014, in *Barkley, et al.*

1 v. *C.R. Bard, Inc., et al.*, Arizona Superior Court, Maricopa County, Case No. CV2011-
2 021250, and September 26, 2011, in *Tyson v. C.R. Bard, Inc., et al.*, Superior Court of
3 Arizona, Maricopa County, Case No. CV2010-011149.

4 John Lehman, M.D.
5 c/o Counsel for Bard Peripheral Vascular and C.R. Bard

6 Dr. Lehman was Group Medical Director and Vice President of Medical Affairs for C.R.
7 Bard from 1991 to 1995; he was a consultant and acting Medical Director for C.R. Bard in
8 2003 and 2004. Plaintiff expects that he is knowledgeable regarding the matters that were
9 the subject of his employment with Bard and his depositions taken on April 2, 2013, in
10 *Phillips v. C.R. Bard, Inc.*, United States District Court, District of Nevada, Case No.
11 3:12-cv-00344-RCJ-WGC, and all related cross-noticed cases and August 7, 2014, in
12 *Coker v. C.R. Bard, Inc., et al.*, United States District Court, Northern District of Georgia,
13 Atlanta Division, Case No. 1:13-cv-0515.

14 Frank Lynch, M.D.
15 Penn State College of Medicine
16 500 University Drive
Hershey PA 17033

17 Dr. Lynch is an Interventional Radiologist at Penn State Hospital. He was a consultant and
18 key opinion leader for Bard on IVC filters. Plaintiff expects that he is knowledgeable
19 regarding the matters that were the subject of his relationship with Bard and his deposition
20 taken on January 30, 2017, in the Bard IVC Filter MDL.

21 John McDermott
22 c/o Counsel for Bard Peripheral Vascular and C.R. Bard

23 Mr. McDermott was President of BPV from 1996 through 2006. Plaintiff expects that he
24 is knowledgeable regarding the matters that were the subject of his employment with Bard
25 and his depositions taken on November 1, 2010, in *Tyson v. C.R. Bard, Inc., et al.*,
26 Superior Court of Arizona, Maricopa County, Case No. CV2010-011149, and February 5,
27 2014, in *Giordano v. C.R. Bard, Inc., et al.*, Superior Court of California, San Diego
28 County, East County Regional Center, Case No. 00069363-CU-PO-EC.

1
2 Abithal Raji-Kubba
3 c/o Counsel for Bard Peripheral Vascular and C.R. Bard

4 Ms. Raji-Kubba was Vice President Research & Development at BPV from 2007 through
5 2010 and Vice President Lutonix Technology Center from 2011 through 2012. Plaintiff
6 expects that she is knowledgeable regarding the matters that were the subject of her
7 employment with Bard and her deposition taken on July 18, 2016, in the Bard IVC Filter
8 MDL.

9 Michael Randall
10 c/o Counsel for Bard Peripheral Vascular and C.R. Bard

11 Mr. Randall has been an employee of BPV in the Research & Development department
12 since 2006; he has held several positions, including Engineer, Program Manager,
13 Associate Director, and Director. Plaintiff expects that he is knowledgeable regarding the
14 matters that were the subject of his employment with Bard and his depositions taken on
15 January 18, 2017, and February 2, 2017, in the Bard IVC Filter MDL.

16 Kim Romney
17 c/o Counsel for Bard Peripheral Vascular and C.R. Bard

18 Ms. Romney has been an employee of BPV since 2011 and is presently a Senior Product
19 Manager for Ports and Filters. Plaintiff expects that she is knowledgeable regarding the
20 matters that were the subject of her employment with Bard and her depositions taken on
21 August 30, 2016, September 7, 2016, and January 18, 2017, in the Bard IVC Filter MDL.

22 Jack Sullivan
23 c/o Counsel for Bard Peripheral Vascular and C.R. Bard

24 Mr. Sullivan was an employee at BPV from 1994 to 2013; he was in the Sales department
25 and held positions including District Manager and Regional Manager. Plaintiff expects
26 that he is knowledgeable regarding the matters that were the subject of his employment
27 with Bard and his depositions taken on September 16, 2016, and November 3, 2016, in the
28 Bard IVC Filter MDL.

1 Alex Tessmer
2 c/o Counsel for Bard Peripheral Vascular and C.R. Bard

3 Mr. Tessmer was an employee and engineer at BPV in the Research & Development
4 department from 1997 through 2004. Plaintiff expects that he is knowledgeable regarding
5 the matters that were the subject of his employment with Bard and his deposition taken on
6 June 12, 2013, in *Phillips v. C.R. Bard, Inc.*, United States District Court, District of
7 Nevada, Case No. 3:12-cv-00344-RCJ-WGC.

8 Doug Uelmen
9 c/o Counsel for Bard Peripheral Vascular and C.R. Bard

10 Mr. Uelmen was an employee at C.R. Bard and then BPV from approximately 1981
11 through 2005; he was Vice President Quality Assurance at BPV from 2003 through 2005.
12 Plaintiff expects that he is knowledgeable regarding the matters that were the subject of
13 his employment with Bard and his depositions taken on October 4, 2013, in *Giordano v.*
14 *C.R. Bard, Inc., et al.*, Superior Court of California, San Diego County, East County
15 Regional Center, Case No. 00069363-CU-PO-EC, and May 13, 2014, in *Coker v. C.R.*
16 *Bard, Inc., et al.*, United States District Court, Northern District of Georgia, Atlanta
17 Division, Case No. 1:13-cv-0515.

18 John Van Vleet
19 c/o Counsel for Bard Peripheral Vascular and C.R. Bard

20 Mr. Van Vleet has been the Vice President Regulatory Affairs/Clinical Affairs at BPV
21 since 2007. Plaintiff expects that he is knowledgeable regarding the matters that were the
22 subject of his employment with Bard and his depositions taken on September 29, 2016,
23 and January 17, 2017, in the Bard IVC Filter MDL.

24 Bryan Vogel
25 c/o Counsel for Bard Peripheral Vascular and C.R. Bard

26 Mr. Vogel has been a Clinical Specialist II for Bard since 2012. Plaintiff expects that he
27 is knowledgeable regarding the matters that were the subject of his employment with Bard
28 and his deposition taken on August 15, 2017, in the Bard IVC Filter MDL.

1 John Weiland
2 c/o Counsel for Bard Peripheral Vascular and C.R. Bard

3 Mr. Weiland has been the President and Chief Operating Officer of C.R. Bard throughout
4 the relevant time period. Plaintiff expects that he is knowledgeable regarding the matters
5 that were the subject of his employment with Bard and his deposition taken on April 23,
6 2014, in *Phillips v. C.R. Bard, Inc.*, United States District Court, District of Nevada, Case
7 No. 3:12-cv-00344-RCJWGC.

8 John Wheeler
9 c/o Counsel for Bard Peripheral Vascular and C.R. Bard

10 Mr. Wheeler has been employed in the Quality Assurance department at BPV since 2012.
11 Plaintiff expects that he is knowledgeable regarding the matters that were the subject of
12 his employment with Bard and his deposition taken on July 29, 2016, in the Bard IVC
13 Filter MDL.

14 Mark Wilson
15 c/o Counsel for Bard Peripheral Vascular and C.R. Bard

16 Mr. Wilson worked in the Sales department at BPV from 2006 through 2010 as a sales
17 training manager. Plaintiff expects that he is knowledgeable regarding the matters that
18 were the subject of his employment with Bard and the deposition taken on January 31,
19 2017, in the Bard IVC Filter MDL.

20 **4. Any witness identified by Defendants.**

21 **Defendants' Witnesses:**

22 Because of the time limits, Defendants request that the following issues be
23 addressed during the Pretrial Conference. The parties have met and conferred on these
24 issues and, as set forth above, Plaintiffs do not believe these issues are appropriate for
25 inclusion in this pretrial order:

26 1. Plaintiffs have indicated that they intend to play the depositions of certain of
27 Defendants' expert witnesses who Defendants do not intend to call during this trial.
28 Defendants request the same ruling as the Court made in the previous trials that while

1 Plaintiffs may use portions of the depositions, “they may not disclose through argument or
2 deposition excerpts that the experts were originally retained by Defendants.” (Dkt 10382,
3 Page 3:22-26). And further that before a deposition of a Bard expert may be played that
4 “there should be some showing ... that no other expert of similar qualifications is
5 available, or that the unavailable expert has some unique testimony to contribute.” (*Id.*,
6 Page 4:104).

7 2. Plaintiffs list two regulatory experts (Dr. Kessler and Dr. Parisian).
8 Defendants request that Plaintiffs identify which one they intend to call.

9 3. Plaintiffs have listed Dr. Kinney as both a fact and an expert witness, and
10 state that they intend to call him to testify about his consulting work for Bard. Defendants
11 object to Dr. Kinney testifying as a fact witness and refers to the Court’s Order granting
12 Defendants’ Motion *in Limine* on this topic. (Dkt. 10075 at page 2). “Plaintiffs may not
13 question Dr. Kinney about his prior work for Bard, and should instruct him not to mention
14 it in his testimony.” (*Id.* At page 3:3-4).

15 4. Plaintiffs have identified multiple interventional radiologists as experts
16 witnesses they intend to call as expert witnesses (including three named by Defendants in
17 other cases, two of whom Defendants withdrew). Defendants object to this as cumulative,
18 and ask Plaintiffs to identify who they intend to call.

19 5. Given the large number of witnesses who have been listed as possible trial
20 witnesses including Bard employees and former who have been subpoenaed by Plaintiffs,
21 and for whom Bard has accepted subpoenas, and for the efficiency of the trial under the
22 time limits, Defendants request that, as the Court directed and parties agreed in the
23 previous MDL trials, the parties provide each other with the names of witnesses who will
24 be called live at least 48 hours in advance of the witness being called.

25 **DEFENDANTS’ WITNESSES:**

26 Defendants’ witnesses who shall be called at trial (either live or by deposition):

27 **Robert Carr**

28 May be contacted c/o Nelson Mullins Riley & Scarborough LLP
201 17th Street NW, Suite 1700, Atlanta, GA 30363

1 404-322-6000
2 Fact Witness

3 **Subject Matter:** Mr. Carr is currently Vice President of International at BPV. He
4 previously held the title of Senior Director of Research and Development at BPV, with
5 responsibility for IVC filters. Mr. Carr may provide testimony regarding biomedical and
6 biomechanical engineering generally, as well as testimony regarding the design,
7 development, manufacture, testing, clearance, evolution, and use of Bard filters,
8 specifically. Mr. Carr may also provide testimony that was the subject of his previous
9 testimony or the subject of declarations/affidavits he has submitted in this action.

10 **Andre Chanduszko**
11 May be contacted c/o Nelson Mullins
12 Riley & Scarborough LLP
201 17th Street NW, Suite 1700, Atlanta, GA 30363
404-322-6000
Fact Witness

13 **Subject Matter:** Mr. Chanduszko is an employee of BPV working as a staff engineer
14 with responsibilities related to the design, development, and testing of IVC filters.
15 Mr. Chanduszko may provide testimony regarding biomedical and biomechanical
16 engineering generally, as well as testimony regarding the design, development,
17 manufacture, testing, clearance, evolution, and use of Bard filters, specifically.
18 Mr. Chanduszko may also provide testimony that was the subject of previous disclosures
19 or his previous testimony.

20 **Chad Modra**
21 May be contacted c/o Nelson Mullins Riley & Scarborough
22 LLP
201 17th Street NW, Suite 1700, Atlanta, GA 30363
404-322-6000
23 Fact Witness

24 **Subject Matter:** Mr. Modra was formerly Vice President of Quality Assurance at BPV,
25 and is currently Staff Vice President of Operations at C. R. Bard, Inc. Mr. Modra may
26 testify regarding any and all aspects of Bard's quality assurance processes that are in place
27 or that have been in place for Bard's retrievable IVC filters. Mr. Modra may testify
28 regarding Bard's processes and procedures for addressing complaints, including complaint

1 handling, investigations, and MDR reporting for its IVC filters. He may also testify to
2 certain communications and inspections/audits with FDA. To the extent that evidence
3 related to the FDA Warning and 483 Letters is admitted, Mr. Modra may offer testimony
4 regarding the same. Mr. Modra may also provide testimony that was the subject of his
5 previous testimony or the subject of declarations/affidavits he has submitted in this action.

6 **Christopher S. Morris, M.D.**

7 Department of Radiology
8 The University of Vermont Medical Center
9 111 Colchester Avenue
Burlington, VT 05401
802-847-8359
Expert Witness

10 **Subject Matter:** Dr. Morris is a medical doctor and is a Fellow of the Society of
11 Interventional Radiology. He is certified in Radiology and holds a Certificate of Added
12 Qualifications in Vascular and Interventional Radiology. Dr. Morris is a Professor of
13 Radiology and Surgery at the College of Medicine at the University of Vermont.
14 Dr. Morris may provide expert testimony about the historical use, risks, and benefits of
15 IVC filters; the health conditions that IVC filters are used to treat; alternate treatments for
16 DVT and Pulmonary Embolism; and the medical literature related to IVC filters.
17 Dr. Morris will also testify regarding his personal experience placing and retrieving IVC
18 filters, including Bard IVC filters, and specifically that Bard retrievable filters are safe and
19 effective. He may respond to assumptions, opinions, and testimony offered by various
20 Plaintiffs' experts as they relate to the same. Dr. Morris also may provide expert
21 testimony about Plaintiffs' medical treatment and her IVC filter. Dr. Morris is expected to
22 offer opinions and testify consistent with his expert report(s) served in the MDL, and in
23 this case, and his previous deposition and trial testimony.

24 Witnesses who may be called at trial (either live, by deposition or prior testimony):

25 **Murray Asch**

26 c/o Lakeridge Health Corporation
27 Director of Interventional Radiology
28 580 Harwood Ave. S
Oshawa, ON L1S 2J4

Subject Matter: Dr. Asch is an Interventional Radiologist who was involved in a pilot study to assess the retrievability of the Recovery filter. Defendants expect that he is knowledgeable regarding the matters that were the subject of his study and work with Bard, as well as his deposition taken on May 2, 2016, in *In re Bard IVC Filters Prod. Liab. Litig.*, MDL No. 2641, United States District Court, District of Arizona (“the Bard IVC Filter MDL”) and his trial testimony in *Booker v. Bard* and *Jones v. Bard*, United States District Court, District of Arizona

Brain Barry

May be contacted c/o Nelson Mullins Riley & Scarborough
LLP
201 17th Street NW, Suite 1700, Atlanta, GA 30363
404-322-6000
Fact Witness

Subject Matter: Mr. Barry is a former employee of C. R. Bard. He may testify regarding the matters that were the subject of his employment with Bard and his deposition.

Kevin Boyle

May be contacted c/o Nelson Mullins Riley & Scarborough LLP
201 17th Street NW, Suite 1700, Atlanta, GA 30363
404-322-6000
Fact Witness

Subject Matter: Mr. Boyle is currently the Vice President of Research and Development for BPV. Mr. Boyle may testify about BPV’s policies and procedures in place for its research and development of its products, including IVC filters. He may testify regarding the testing, development, and design of Bard’s IVC filters. He may also provide testimony that was the subject of his previous deposition testimony.

Paul Briant, Ph.D., P.E.

Exponent
149 Commonwealth Drive
Menlo Park, CA 94025
650-326-9400
Expert Witness

Subject Matter: Dr. Briant is a mechanical engineer who specializes in mechanical engineering, solid mechanics, and finite element analysis (FEA) of structures, including medical devices. He is a Principal Engineer with Exponent Failure Analysis Associates.

1 Dr. Briant may provide expert testimony on mechanical engineering, solid mechanics, and
2 finite element analysis (FEA). He may respond to assumptions, opinions, and testimony
3 offered by Plaintiffs' expert Dr. McMeeking. Dr. Briant is expected to offer opinions and
4 testify consistent with his expert report(s) served in the MDL, and his previous deposition
5 and trial testimony.

6 **David Ciavarella, M.D.**

7 May be contacted c/o Nelson Mullins Riley & Scarborough LLP
8 201 17th Street NW, Suite 1700, Atlanta, GA 30363
404-322-6000
Fact Witness

9 **Subject Matter:** Dr. Ciavarella is an employee of C. R. Bard, Inc. He is currently Vice
10 President, Corporate Clinical Affairs at Bard, and he has held that title since he began
11 working for C. R. Bard in 2004. Dr. Ciavarella may testify concerning any and all aspects
12 of Bard's clinical affairs policies, procedures, and practices that are, or have been, in place
13 with respect to Bard's IVC filters. Dr. Ciavarella may also provide testimony that was the
14 subject of his previous deposition testimony.

15 Based on reports received by Bard, Dr. Ciavarella may also testify concerning the
16 rates of complications with Bard's IVC filters and analyses performed by Bard regarding
17 adverse event rates. Dr. Ciavarella may also testify that the complication rates reported to
18 Bard remain below the guidelines established by the Society of Interventional
19 Radiologists and Bard's action limits. He may also provide testimony that was the subject
20 of his previous deposition testimony.

21 **Robert Cortelezzi**

22 May be contacted c/o Nelson Mullins Riley & Scarborough LLP
23 201 17th Street NW, Suite 1700, Atlanta, GA 30363
404-322-6000
Fact Witness

24 **Subject Matter:** Mr. Cortelezzi was an employee at BPV from approximately 1990 to
25 2008; he was a Regional Manager from 2004 through 2008. He may testify regarding the
26 matters that were the subject of his employment with Bard and his deposition taken on
27 November 11, 2016, in the Bard IVC Filter MDL.

28 **Joni Creal**

1 May be contacted c/o Nelson Mullins Riley & Scarborough LLP
2 201 17th Street NW, Suite 1700, Atlanta, GA 30363
3 404-322-6000
4 Fact Witness

5 **Subject Matter:** Ms. Creal started with BPV in 2009. She is Associate Director of
6 Regulatory Affairs. She may testify about BPV's overall regulatory strategy for its filter
7 lines. She may also testify concerning other regulatory options considered by BPV when it
8 determined the best approach to gain FDA clearance for its products. Ms. Creal may
9 testify regarding communications between the FDA and BPV concerning the clearance
10 process for its filters, and any communication between BPV and the FDA concerning
11 these matters. Ms. Creal may also testify regarding BPV's response to requests from the
12 FDA. Ms. Creal may also testify concerning BPV's decision to conduct clinical trials, and
13 the process and procedures for clinical trials and studies.

14 Ms. Creal may also testify regarding the steps that BPV took to ensure that the
15 FDA was always abreast of complications, product improvements, and potential changes
16 to IFUs for its filters. In this regard, Ms. Creal may testify regarding BPV's open and
17 frank communications with the FDA and the FDA's appreciation for BPV's openness and
18 honesty.

19 **Len DeCant**

20 May be contacted c/o Nelson Mullins Riley & Scarborough LLP
21 201 17th Street NW, Suite 1700, Atlanta, GA 30363
22 404-322-6000
23 Fact Witness

24 **Subject Matter:** Mr. DeCant is a former employee of BPV. He served as Vice President
25 of Research and Development from 2002 through 2007. Mr. DeCant may testify regarding
26 any and all aspects of the design, development, testing, clearance, evolution, and use of
27 Bard filters, including Bard's policies and procedures for design, testing, and evaluation
28 of filters. Mr. DeCant may also provide testimony that was the subject of his previous
deposition testimony.

John DeFord

May be contacted c/o Nelson Mullins Riley & Scarborough LLP
201 17th Street NW, Suite 1700, Atlanta, GA 30363
404-322-6000

1 Fact Witness

2 **Subject Matter:** Dr. DeFord is currently Senior Vice President of Science, Technology
3 and Clinical Affairs of C. R. Bard. Dr. DeFord may testify regarding any and all aspects
4 of the design, development, testing, clearance, evolution, and use of Bard filters, including
5 Bard's policies and procedures for design, testing, marketing and evaluation of filters.
6 Dr. DeFord may also provide testimony that was the subject of his previous deposition
7 testimony.

8 **Mary Edwards**

9 May be contacted c/o Nelson Mullins Riley & Scarborough LLP
10 201 17th Street NW, Suite 1700, Atlanta, GA 30363
404-322-6000
Fact Witness

11 **Subject Matter:** Ms. Edwards is a former Vice President for Regulatory/Clinical Affairs
12 of BPV. She may provide testimony regarding of the regulatory clearance process
13 undertaken by BPV for the Recovery® Filter including the 510(k) processes and actions
14 taken by BPV. Additionally, Ms. Edwards may testify concerning BPV's overall
15 regulatory strategy for its filter lines, including the regulatory approach taken by BPV
16 concerning the Recovery® Filter. In addition, Ms. Edwards may also testify concerning
17 other regulatory options considered by BPV when it determined the best approach to gain
18 FDA clearance for its new product. Ms. Edwards may testify regarding the regulatory
19 history of Bard's filters, communications between the FDA and BPV concerning the
20 Recovery® Filter, the clearance process for the Recovery® Filter, and post-clearance
21 communications BPV had with the FDA while she was employed with BPV and
22 testimony that was the subject of her depositions.

23 **Audrey Fasching, Ph.D., P.E.**

24 Anamet, Inc.
25 26102 Eden Landing Road, Suite 3
Hayward, CA 94545
26 510-887-8811
Expert Witness

27 **Subject Matter:** Dr. Fasching is a metallurgical engineer with experience in the areas of
28

1 failure analysis, welding, heat treatment, corrosion and biomaterials, including nitinol.
 2 She is a Senior Materials Engineer at Anamet. She may provide expert testimony about
 3 the properties and uses of nitinol in medical devices, industry standards for manufacture
 4 of medical device grade nitinol, her observations of the various filter conditions through
 5 examination of the filter at issue in this case and other Bard IVC filters. Dr. Fasching may
 6 respond to assumptions, opinions, and testimony offered by Plaintiffs' expert
 7 Dr. McMeeking. Dr. Fasching is expected to offer opinions and to testify consistent with
 8 her expert report(s) served in the MDL, and her previous deposition testimony.

9 **David W. Feigal, M.D., M.P.H.**

10 11806 Barranca Road
 11 Santa Rosa Valley, CA 93012
 540-738-2550
 Expert Witness

12 **Subject Matter:** Dr. Feigal is a medical doctor with a Master's Degree in Public Health
 13 in the fields of epidemiology and biostatistics. Dr. Feigal may provide expert testimony as
 14 an epidemiologist regarding the available resources for analysis of complications rates in
 15 IVC filters, including the SIR Guidelines and the limitations of those resources in
 16 accurately reporting rates, predicting rates, or comparing rates of those devices. He may
 17 respond to assumptions, opinions, and testimony offered by various Plaintiffs' experts as
 18 they relate to such analyses. Dr. Feigal is expected to offer opinions and testify consistent
 19 with his expert report served in the MDL, and his previous deposition testimony.

20 **Thomas Ferari**

21 May be contacted c/o Nelson Mullins Riley & Scarborough LLP
 22 201 17th Street NW, Suite 1700, Atlanta, GA 30363
 404-322-6000
 Fact Witness

23 **Subject Matter:** Mr. Ferari is a contract engineer for Bard. He may provide testimony
 24 that was the subject of his previous deposition.

25 **Timothy Fischer**

26 May be contacted c/o Nelson Mullins Riley & Scarborough LLP
 27 201 17th Street NW, Suite 1700, Atlanta, GA 30363
 404-322-6000
 Fact Witness

1 **Subject Matter:** Mr. Fischer is a former employee of BPV. He may provide testimony
2 that was the subject of his prior deposition.

3 **Kay Fuller**

4 308 Meadowlark Rd
Santa Ynez, CA 93460

5 **Subject Matter:** Ms. Fuller is a former employee of BPV. She may provide testimony
6 that was the subject of her previous deposition.

7 **Brooke Gillette**

8 May be contacted c/o Nelson Mullins Riley & Scarborough LLP
201 17th Street NW, Suite 1700, Atlanta, GA 30363
9 404-322-6000
Fact Witness

10 **Subject Matter:** Ms. Gillette is a former employee of Bard. She may provide testimony
11 that was the subject of her previous deposition.

12 **Christopher Ganser**

13 May be contacted c/o Nelson Mullins Riley & Scarborough LLP
201 17th Street NW, Suite 1700, Atlanta, GA 30363
14 404-322-6000
Fact Witness

15 **Subject Matter:** Mr. Ganser is a retired employee of C. R. Bard who has worked for Bard
16 for approximately twenty-two years, and retired in 2011. He held various positions while
17 working for Bard, Vice President of Quality Assurance and Environmental Services and
18 Safety. Mr. Ganser may testify concerning how such policies, procedures, and practices
19 were developed, implemented and reviewed. Mr. Ganser may also testify concerning any
20 and all aspects of Bard's quality control and field assurance practices and procedures that
21 are, or have been, in place with respect to Bard's IVC filters as well as testimony that was
22 the subject of his deposition.

23 **Holly Glass**

24 8280 Greensboro Drive, Suite 601
McLean, VA 22101
25 703-752-1115
Fact Witness

26 **Subject Matter:** Ms. Glass was Vice President Government & Public Relations at C. R.
27 Bard from 2002 through 2009. She may testify regarding the matters that were the subject
28 of her employment with Bard and her deposition.

Clement J. Grassi, M.D., FSIR

18 Sussex Road
Winchester, MA 01890
617-732-7263
Expert Witness

Subject Matter: Dr. Grassi is a medical doctor and is a Fellow of the Society of Interventional Radiology. He is certified in Radiology and holds a Certificate of Added Qualifications in Vascular and Interventional Radiology. From 1985 to 2001, Dr. Grassi held positions of Clinical Fellow, Instructor, and Assistant Professor of Radiology at Harvard Medical School. He is currently affiliated with Hallmark Health and partners Healthcare System. Dr. Grassi may provide expert testimony about the historical use, risks, and benefits of IVC filters; the health conditions that IVC filters are used to treat; and his experience with the Society of Interventional Radiology, specifically including the history and use of the Quality Improvement Guidelines and Practice Parameters relating to IVC Filters that have been published by the SIR. He may also testify about the medical literature related to IVC filters. He may respond to assumptions, opinions, and testimony offered by various Plaintiffs' experts as they relate to the same. Dr. Grassi is expected to offer opinions and testify consistent with his expert report served in the MDL, and his previous deposition and trial testimony.

Mickey Graves

May be contacted c/o Nelson Mullins Riley & Scarborough LLP
201 17th Street NW, Suite 1700, Atlanta, GA 30363
404-322-6000
Fact Witness

Subject Matter: Mr. Graves is a Senior Research and Development Engineer with BPV. Mr. Graves may testify about BPV's policies and procedures in place for its research and development of its products, including IVC Filters. He may testify regarding the testing, development, and design of Bard's IVC Filters. He may also testify regarding the evolution of Bard's IVC Filters, including the fact that Bard is constantly evaluating the medical devices it sells, and it is constantly striving to improve the performance of those devices. He may also provide testimony that was the subject matter of his previous deposition testimony.

Janet Hudnall

May be contacted c/o Nelson Mullins Riley & Scarborough LLP
201 17th Street NW, Suite 1700, Atlanta, GA 30363
404-322-6000
Fact Witness

Subject Matter: Ms. Hudnall is a former employee of BPV who worked for BPV from 1998 to 2008. While at BPV, Ms. Hudnall held various positions, including Senior Marketing Manager. In those roles, Ms. Hudnall was involved with and has personal knowledge of, among other things, BPV's marketing strategies, policies, and practices with regard to the Bard's IVC filter line of products. Ms. Hudnall may testify concerning BPV's marketing strategies, policies, and practices with regard to the Recovery® and G2® Filters.

Ms. Hudnall may also testify concerning the training provided by BPV to physicians to familiarize them with the implantation and retrieval of the G2® Filter. Ms. Hudnall may also testify concerning BPV's practices and policies regarding complaints that were communicated by users. Ms. Hudnall may also testify concerning BPV's decision to conduct a clinical trial, called the EVEREST Study, and issues and events associated with or related to the EVEREST Study. In this regard, Ms. Hudnall may testify concerning the selection and clearance process for securing investigators and investigation sites, the creation and development of the study protocol, the creation and development of the informed consent form, and the steps taken by BPV to ensure that the study ran properly and according to established guidelines. She may also provide testimony that was the subject of her previous deposition testimony.

Brian Hudson

May be contacted c/o Nelson Mullins Riley & Scarborough LLP
201 17th Street NW, Suite 1700, Atlanta, GA 30363
404-322-6000
Fact Witness

Subject Matter: Mr. Hudson has been an employee of BPV since 1999 as a Quality Engineering Technician, a Senior Engineering Technician, and a Quality Engineer. Mr. Hudson may provide testimony regarding filter risk assessment and analysis, review of testing protocols and regulatory compliance data, and the creation of Failure Modes and

1 Effects Analyses (FMEA) that assess the potential hazards related to filters and the
2 mitigation of those hazards. He may also provide testimony that was the subject of his
3 previous deposition testimony.

4 **Sanjeeva Kalva, M.D.**
5 c/o Beus Gilbert
6 701 N. 44St.
Phoenix, Arizona 85005
Expert Witness

7 **Subject Matter:** Dr. Kalva is an interventional radiologist retained by plaintiffs as an
8 expert witness. He is expected to testify about the expert report he partially authored with
9 Dr. Thomas Kinney and Dr. Ann Roberts, and their compensation as expert witnesses. He
10 is further expected to testify consistent with his deposition given in the MDL.

11 **Sanjeeva Kandarpa, M.D.**
12 National Institute of Biomedical Imaging and Bioengineering
13 Division of Applied Science and Technology
9000 Rockville Pike
Building 31 Room 1C14 31 Center Dr. Bethesda, MD 20814

14 **Subject Matter:** Dr. Kandarpa was the medical monitor for the Everest Study. He may
15 provide testimony that was the subject of his previous deposition testimony.

16 **John Lehman, M.D.**
17 May be contacted c/o Nelson Mullins Riley & Scarborough LLP
201 17th Street NW, Suite 1700, Atlanta, GA 30363
18 Fact Witness

19 **Subject Matter:** Dr. Lehman was Group Medical Director and Vice President of Medical
20 Affairs for C. R. Bard from 1991 to 1995; he was a consultant and acting Medical
21 Director for C. R. Bard in 2003 and 2004. He may provide testimony regarding the
22 matters that were the subject of his work with Bard and his depositions.

23 **William Little**
24 May be contacted c/o Nelson Mullins Riley & Scarborough LLP
201 17th Street NW, Suite 1700, Atlanta, GA 30363
25 404-322-6000
Fact Witness

26 **Subject Matter:** Mr. Little is BPV's former Vice President of Global Marketing. He may
27 provide testimony regarding BPV's marketing strategies, policies, and practices with
28 regard to Bard's IVC filter line of products. He may also testify regarding

1 communications by Bard to health care providers regarding its filters and changes or
2 revisions to those communications over time. He may also provide testimony that was the
3 subject matter of his previous deposition testimony.

4 **Judy Ludwig**

5 May be contacted c/o Nelson Mullins Riley & Scarborough LLP
6 201 17th Street NW, Suite 1700, Atlanta, GA 30363
404-322-6000
Fact Witness

7 **Subject Matter:** Ms. Ludwig is currently Senior Manager of Field Assurance at BPV.
8 Ms. Ludwig may testify regarding any and all aspects of Bard's quality assurance
9 processes that are in place or that have been in place for Bard's retrievable IVC filters.
10 Ms. Ludwig may testify regarding Bard's processes and procedures for adverse complaint
11 handling, complaint investigation, and reporting of adverse events to the FDA regarding
12 its filters. She may also testify to certain communications and inspections/audits with
13 FDA. To the extent that evidence related to the FDA Warning and 483 Letters is admitted,
14 Ms. Ludwig may offer testimony regarding the same. Ms. Ludwig may also provide
15 testimony that was the subject of her previous deposition testimony.

16 **John McDermott**

17 May be contacted c/o Nelson Mullins Riley & Scarborough LLP
18 201 17th Street NW, Suite 1700, Atlanta, GA 30363
404-322-6000
Fact Witness

19 **Subject Matter:** Mr. McDermott was President of BPV from 1996 through 2006. He may
20 testify about matters that were the subject of his employment with Bard and his
21 depositions.

22 **Patrick McDonald**

23 May be contacted c/o Nelson Mullins Riley & Scarborough LLP
24 201 17th Street NW, Suite 1700, Atlanta, GA 30363
404-322-6000
Fact Witness

25 **Subject Matter:** Mr. McDonald is an employee of BPV as a Sales Representative and
26 Field Sales Trainer. He may testify regarding the matters that were the subject of his
27 deposition.

28 **Michael Miller, MD**

1 University of Maryland School of Medicine
2 Cardiovascular Medicine Division
3 110 S Paca St., Suite 7-124
4 Baltimore, MD, 21201

5 **Subject Matter:** Dr. Miller is a cardiologist and an expert retained by Bard. He may
6 testify regarding the opinions in his expert reports submitted in this case.

7 **Leah Nitke, D.O.**
8 Aurora Health Center
9 2845 Greenbrier Rd, Ste 120
10 Green Bay, WI 54311

11 **Subject matter:** Dr. Nitke is Ms. Tinlin's primary care provider and may testify
12 regarding her care and treatment of Ms. Tinlin. She may testify regarding the matters that
13 were the subject of her deposition.

14 **David Owens, MD**
15 4545 Harris Trail
16 Atlanta, GA 30327

17 **Subject Matter:** Dr. Owens is a radiologist and an expert retained by Bard. He may
18 testify regarding the opinion in his expert report submitted in this case.

19 **Daniel Orms**
20 May be contacted c/o Nelson Mullins Riley & Scarborough LLP
21 201 17th Street NW, Suite 1700, Atlanta, GA 30363
22 404-322-6000
23 Fact Witness

24 **Subject Matter:** Mr. Orms is a former employee of BPV. He may testify about matters
25 that were the subject of his employment with Bard and his depositions.

26 **Shari O'Quinn**
27 May be contacted c/o Nelson Mullins Riley & Scarborough LLP
28 201 17th Street NW, Suite 1700, Atlanta, GA 30363
404-322-6000
Fact Witness

Subject Matter: Ms. O'Quinn is a former employee of BPV who worked for BPV from
2003 to 2007. Ms. O'Quinn held three different positions while working for BPV,
including Manager of Regulatory Affairs, Director of Regulatory Affairs, and Director of
Regulatory and Clinical Affairs. Ms. O'Quinn may testify concerning BPV's overall
regulatory strategy for its filter lines, including the regulatory approach taken by BPV

1 concerning the Bard filters. Ms. O'Quinn may testify regarding communications between
2 the FDA and Bard concerning Bard's filters. She may also testify concerning Bard's post-
3 market activities concerning Bard's IVC filters, including investigations, and
4 communications with FDA. She may also provide testimony that was the subject of her
5 previous testimony.

6 **Abithal Raji-Kubba**

7 May be contacted c/o Nelson Mullins Riley & Scarborough LLP
201 17th Street NW, Suite 1700, Atlanta, GA 30363
404-322-6000
8 Fact Witness

9 **Subject Matter:** Ms. Raji-Kubba was the Vice President of Research and Development
10 for BPV. She was with the company from at least 2007 through 2011. She may testify
11 regarding her involvement in and knowledge of the design modifications that were made
12 to Bard's IVC filter line of products and the premarket testing that was conducted on the
13 modified devices. She may also testify regarding her knowledge regarding why these
14 design changes were needed and if and to what extent they made each IVC filter a safer
15 device and could have been instituted sooner. She may also provide testimony that was
16 the subject of her previous deposition testimony.

17 **Mike Randall**

18 May be contacted c/o Nelson Mullins Riley & Scarborough LLP
201 17th Street NW, Suite 1700, Atlanta, GA 30363
404-322-6000
19 Fact Witness

20 **Subject Matter:** Mr. Randall is the former Director of Research and Development for
21 BPV. Mr. Randall may provide testimony regarding biomedical and biomechanical
22 engineering generally, as well as testimony regarding the design, development,
23 manufacture, testing, clearance, evolution, and use of Bard filters, specifically.
24 Mr. Randall may also provide testimony that was the subject of his previous testimony.

25 **Joshua Riebe, MD**

1 Green Bay Radiology
2 2941 S Ridge Rd
3 Green Bay, WI 54304

4 **Subject Matter:** Dr. Riebe implanted the filter in Mrs. Tinlin. He may testify about his
5 care and treatment of Mrs. Tinlin. He may also provide testimony that was the subject of
6 his deposition in this case.

7 **Kimberly Romney**

8 May be contacted c/o Nelson Mullins Riley & Scarborough LLP
9 201 17th Street NW, Suite 1700, Atlanta, GA 30363
10 404-322-6000
11 Fact Witness

12 **Subject Matter:** Ms. Romney is currently the Senior Product Manager for C. R. Bard,
13 Inc. She may provide testimony regarding BPV's marketing strategies, policies, and
14 practices with regard to Bard's IVC filter line of products. Ms. Romney may also testify
15 regarding communications by Bard to health care providers regarding its filters and
16 changes or revisions to those communications over time. She may also provide testimony
17 that was the subject of her previous deposition testimony.

18 **Gin Schulz**

19 May be contacted c/o Nelson Mullins Riley & Scarborough LLP
20 201 17th Street NW, Suite 1700, Atlanta, GA 30363
21 404-322-6000
22 Fact Witness

23 **Subject Matter:** Ms. Schulz is a former employee of C. R. Bard, Inc. While at C. R.
24 Bard, Inc., Ms. Schulz was the Staff Vice President of Quality Assurance Operations.
25 Prior to working in this capacity, she worked for BPV as a Vice President of Quality
26 Assurance. Ms. Schulz may testify live at trial regarding any and all aspects of Bard's
27 quality assurance processes that are in place or that have been in place for Bard's IVC
28 filters. Ms. Schulz may testify regarding Bard's processes and procedures for adverse
complaint handling, complaint investigation, and reporting of adverse events to the FDA
regarding its filters. Ms. Schulz may also provide testimony that was the subject of her
previous deposition testimony.

Based on reports received by Bard, she may also testify regarding the rates of

1 complications with Bard's IVC filters and any analysis performed by Bard regarding
2 adverse event rates. Ms. Schulz may also testify that the complication rates with Bard's
3 commercially available filters (whether fracture, migration, perforation, or tilt) remain
4 below the guidelines established by the Society of Interventional Radiologists and Bard's
5 action limits. She may also testify that, upon receiving reports of adverse events, Bard was
6 and has been proactive in investigating those reports and analyzing whether the risk of
7 fracture for its products is in line with industry standards and guidelines, which it is and
8 always has been. She may also provide testimony that was the subject of her previous
9 deposition testimony.

10 **Christopher Smith**

11 May be contacted c/o Nelson Mullins Riley & Scarborough LLP
12 201 17th Street NW, Suite 1700, Atlanta, GA 30363
404-322-6000
Fact Witness

13 **Subject Matter:** Mr. Smith is a former employee of BPV. He may testify about matters
14 that were the subject of his employment with Bard and his deposition.

15 **Heather Stanko, MD**

16 Neurology Consultants of Bellin Health
725 South Webster Ave, Suite 201
17 Green Bay, WI 54301

18 **Subject Matter:** Dr. Stanko is Mrs. Tinlin's neurologist. She may testify about her care
19 and treatment of Mrs. Tinlin. She may testify about matters that were the subject of her
20 deposition given in this case.

21 **Piotr Sobiesczyk**

22 Harvard Medical School
Department of Medicine
Cardiovascular Division
23 75 Francis Street
24 Boston, MA 02115

25 **Subject Matter:** Dr. Sobiesczyk is a Cardiovascular Specialist and was retained by Bard
26 as an expert. He may testify about the matters contained in his expert report in this case
27 and his prior testimony in the MDL.

28 **William Stavropoulos, MD**

1 May be contacted c/o Samantha Conway, Christie & Young, P.C.
2 1880 John F. Kennedy Blvd, 10th Floor
3 Philadelphia, PA 19103
4 Fact Witness

5 **Subject Matter:** Dr. Stavropoulos was the principal investigator for his facility on the
6 EVEREST study. He has written articles concerning IVC filters. Additionally,
7 Dr. Stavropoulos may testify regarding his clinical experience with IVC filters such as his
8 experience with and techniques for placing and retrieving IVC filters, as well as
9 indications for the use of IVC filters. He may also testify regarding the advantages of
10 retrievable IVC filters. He may discuss the benefits, risks, and potential complications of
11 IVC filters, such as migration, fracture, and perforation, and the imaging and other
12 evaluation of those events and their clinical significance, if any. He may also testify
13 regarding the MAUDE database and whether it can be used to determine the fracture rate
14 of a medical device. He may also discuss the dynamic nature of the IVC as well as the
15 body's reaction to and endothelialization of IVC filters. He may also testimony about
16 matters that were the subject of his deposition.

17 **Jack Sullivan**

18 May be contacted c/o Nelson Mullins Riley & Scarborough LLP
19 201 17th Street NW, Suite 1700, Atlanta, GA 30363
20 404-322-6000
21 Fact Witness

22 **Subject Matter:** Mr. Sullivan was a former Regional Sales Manager for BPV from 2005
23 to 2013. Prior to 2005, he held other sales positions with BPV. He may testify about
24 BPV's sales practices and procedures, and the sales person's role in interacting with a
25 doctor and the responsibility of sales people to report adverse events as well as about
26 matters that were the subject of his depositions.

27 **Mehdi Syed**

28 May be contacted c/o Nelson Mullins Riley & Scarborough LLP
29 201 17th Street NW, Suite 1700, Atlanta, GA 30363
30 404-322-6000
31 Fact Witness

32 **Subject Matter:** Mr. Syed is the current Vice President of Operations Finance at C. R.
33 Bard, Inc. Mr. Syed may testify about the net worth of BPV and C. R. Bard, Inc., as well

1 as the percentage of Bard's revenue attributable to BPV and filter products specifically.
2 Mr. Syed may also testify about the nature of Bard's shareholders and the process and
3 rationale behind dividend payments. He may also provide testimony that is the subject of
4 his deposition.

5 **Alex Tessmer**

6 May be contacted c/o Nelson Mullins Riley & Scarborough LLP
7 201 17th Street NW, Suite 1700, Atlanta, GA 30363
404-322-6000
Fact Witness

8 **Subject Matter:** Mr. Tessmer is a Product Manager at BPV. Mr. Tessmer was previously
9 employed by BPV as an engineer between 1997 and June 2005. In that position,
10 Mr. Tessmer contributed to filter product development occurring during the period 2002
11 to June 2005. He may provide general testimony regarding mechanical engineering and
12 specific testimony regarding product design, technology development, and materials
13 testing. He may also provide testimony that was the subject of his previous deposition
14 testimony.

15 **Ronald A. Thisted, Ph.D.**

16 Office of the Provost
17 The University of Chicago
Levi Hall, Room 432
5801 South Ellis Avenue
Chicago, IL 60637
18 773-702-5539
19 Expert Witness

20 **Subject Matter:** Dr. Thisted is a Professor in the Department of Public Health Sciences,
21 the Department of Statistics, the Department of Anesthesia & Critical Care, the
22 Undergraduate College, and the Committee on Clinical Pharmacology and
23 Pharmacogenomics at the University of Chicago. He is an expert in the fields of statistics,
24 biostatistics, mathematics, and epidemiology. He may respond to assumptions, opinions,
25 and testimony offered by various Plaintiffs' experts as they relate to the same. Dr. Thisted
26 is expected to offer opinions and testify consistent with his expert report served in the
27 MDL, and his previous deposition testimony.

28 **Donna-Bea Tillman, Ph.D., MPA, FRAPS**

1 Biologics Consulting
2 400 N. Washington Street, Suite 100
3 Alexandria, Virginia 22314
4 703-739-5695
5 Expert Witness

6 **Subject Matter:** Dr. Tillman may provide expert testimony concerning FDA regulatory
7 requirements, FDA regulatory compliance, the FDA clearance process, and post-clearance
8 monitoring requirements. Dr. Tillman may further testify about the specific steps Bard
9 followed to obtain FDA clearance of its IVC filters, and Bard's compliance with post-
10 clearance monitoring requirements. To the extent that evidence related to the FDA
11 Warning and 483 Letters is admitted, Dr. Tillman may testify regarding the same.
12 Dr. Tillman is expected to offer opinions and testify consistent with her expert report(s)
13 served in the MDL and her previous testimony.

14 **Debra Tinlin**
15 408 E. Park St.
16 Bonduel, WI 54107

17 **Subject Matter:** Mrs. Tinlin is a plaintiff.

18 **James Tinlin**
19 408 E Park St
20 Bonduel, WI 54107

21 **Subject Matter:** Mr. Tinlin is a plaintiff.

22 **Scott Trerotola, MD**
23 May be contacted c/o Samantha Conway, Christie & Young, P.C.
24 1880 John F. Kennedy Blvd, 10th Floor
25 Philadelphia, PA 19103
26 Fact Witness

27 **Subject Matter:** Dr. Trerotola may testify regarding his clinical experience with IVC
28 filters such as his experience with and techniques for placing and retrieving IVC filters, as
well as indications for the use of IVC filters. He may also testify regarding the advantages
of retrievable IVC filters. He may discuss the benefits, risks, and potential complications
of IVC filters, such as migration, fracture, and perforation, and the imaging and other
evaluation of those events and their clinical significance, if any. He may also discuss the
dynamic nature of the IVC as well as the body's reaction to and endothelialization of IVC

1 filters. He may also provide testimony that was the subject of his previous deposition
2 testimony.

3 **Doug Uelman**

4 May be contacted c/o Nelson Mullins Riley & Scarborough LLP
5 201 17th Street NW, Suite 1700, Atlanta, GA 30363
6 404-322-6000
7 Fact Witness

8 **Subject Matter:** Mr. Uelman was employed by Bard from 1996 to 2005 as Vice
9 President for Quality Assurance. Prior to working in that capacity, Mr. Uelman was
10 BPV's Director of Quality Assurance. Mr. Uelman may testify regarding any and all
11 aspects of Bard's quality control processes that are in place or that have been in place for
12 Bard's IVC filters. Mr. Uelman may testify regarding Bard's processes and procedures for
13 adverse complaint handling, complaint investigation, and reporting of adverse events to
14 the FDA regarding its filters. He may also provide testimony that was the subject of his
15 previous deposition testimony.

16 **John Van Vleet**

17 May be contacted c/o Nelson Mullins Riley & Scarborough LLP
18 201 17th Street NW, Suite 1700, Atlanta, GA 30363
19 404-322-6000
20 Fact Witness

21 **Subject Matter:** Mr. Van Vleet an employee of BPV. While at BPV, Mr. Van Vleet has
22 been the Vice President of Regulatory and Clinical Affairs since 2007. Mr. Van Vleet may
23 testify concerning any and all aspects of Bard's clinical affairs policies, procedures, and
24 practices that are, or have been, in place with respect to Bard's IVC filters. Mr. Van Vleet
25 may also testify regarding the regulatory clearance process and communications between
26 the FDA and BPV. Mr. Van Vleet may also provide testimony that was the subject of his
27 deposition testimony or the subject of declarations/affidavits he has submitted in this
28 action.

29 **Timothy Vartanian, MD, PhD**

30 Weill Cornell Medicine
31 Brain and Mind Research Institute
32 Judith Jaffe Multiple Sclerosis Center
33 1305 York Avenue, 2ND Floor
34 New York, NY 10021, USA

1 **Subject Matter:** Dr. Vartanian is neurologist and was retained by Bard as an expert in
2 this case. He may testify about the matters in his expert report produced in this case.

3 **Carol Vierling**

4 May be contacted c/o Nelson Mullins Riley & Scarborough LLP
201 17th Street NW, Suite 1700, Atlanta, GA 30363
5 404-322-6000
Fact Witness

6 **Subject Matter:** Ms. Vierling is a former employee of BPV who held the position of
7 Director of Regulatory Affairs from 1992 through June 2002. Ms. Vierling may also
8 testify regarding the 510(k) submission submitted by Bard to the FDA for the Recovery®
9 Filter in 2002. In this regard, she may testify regarding her signing of the Truthfulness and
10 Accuracy Statement included in that submission. She may also testify regarding the cover
11 letter to the FDA that accompanied the 510(k) submission, why it identified Kay Fuller as
12 the new FDA contact person for this device, how she signed that cover letter, and why she
13 signed the cover letter in the manner that she did. She may also testify to her interactions
14 with Kay Fuller and that Ms. Fuller never expressed any concerns to her regarding the
15 Recovery® Filter 510(k) submission, the testing of that device, the safety or efficacy of
16 that device, or the Asch clinical study regarding that device. She may also provide
17 testimony that was the subject of her previous deposition testimony.

18 **Bryan Vogel**

19 May be contacted c/o Nelson Mullins Riley & Scarborough LLP
201 17th Street NW, Suite 1700, Atlanta, GA 30363
20 404-322-6000
Fact Witness

21 **Subject Matter:** Mr. Vogel is a Principal Clinical Assurance Specialist at BPV. He may
22 testify regarding his role and Bard's processes, procedures, and practices for adverse
23 complaint handling, complaint investigation, and reporting of adverse events to the FDA
24 regarding its filters. He may also testify regarding the qualifications and training of BPV's
25 Field Assurance personnel. He may also provide testimony that was the subject matter of
26 his previous deposition testimony.

27 **Allison Walsh**

28 May be contacted c/o Nelson Mullins Riley & Scarborough LLP
201 17th Street NW, Suite 1700, Atlanta, GA 30363

1 404-322-6000
2 Fact Witness

3 **Subject Matter:** Ms. Walsh is a former employee of Bard. She may testify regarding the
4 matters that were the subject of his deposition.

5 **John Weiland**

6 May be contacted c/o Nelson Mullins Riley & Scarborough LLP
201 17th Street NW, Suite 1700, Atlanta, GA 30363
404-322-6000
7 Fact Witness

8 **Subject Matter:** Mr. Weiland is a retired President and Chief Operating Officer of Bard.
9 He may testify regarding the matters that were the subject of his deposition.

10 **John Wheeler**

11 May be contacted c/o Nelson Mullins Riley & Scarborough LLP
201 17th Street NW, Suite 1700, Atlanta, GA 30363
404-322-6000
12 Fact Witness

13 **Subject Matter:** Mr. Wheeler is a former Field Assurance Engineering Manager at BPV.
14 He may testify regarding Bard's processes, procedures, and practices for adverse
15 complaint handling, complaint investigation, and reporting of adverse events to the FDA
16 regarding its filters. He may also testify regarding the qualifications and training of BPV's
17 Field Assurance personnel. He may also testify regarding BPV's tracking and trending of
18 complaints regarding Bard IVC filters. He may also provide testimony that was the
19 subject matter of his previous deposition testimony.

20 **Steve Williamson**

21 May be contacted c/o Nelson Mullins Riley & Scarborough LLP
201 17th Street NW, Suite 1700, Atlanta, GA 30363
404-322-6000
22 Fact Witness

23 **Subject Matter:** Mr. Williamson is the current President of BPV. Mr. Williamson may
24 testify concerning BPV's broad and overarching policies as a company and specifically
25 concerning Bard's IVC filters, including, but not limited to, the companies' business
26 practices, research and development, manufacturing, marketing and sales policies, and
27 regulatory strategies and policies. He may also provide testimony that was the subject of
28 his previous deposition testimony.

Mark Wilson

May be contacted c/o Nelson Mullins Riley & Scarborough LLP
201 17th Street NW, Suite 1700, Atlanta, GA 30363
404-322-6000
Fact Witness

Subject Matter: Mark Wilson was the Director of Sales, Training, and Development at C. R. Bard, Inc. from 2004 to 2011. Mr. Wilson may provide testimony regarding Bard's sales practices and procedures. He may also testify regarding training programs for Bard's sales personnel. He may also provide testimony that was the subject of his previous deposition.

Natalie Wong

May be contacted c/o Nelson Mullins Riley & Scarborough LLP
201 17th Street NW, Suite 1700, Atlanta, GA 30363
404-322-6000
Fact Witness

Subject Matter: Ms. Wong is an employee of BPV. She began working for the company in 2002 and has been the Quality Engineering Manager in Field Assurance since 2007. Prior to working in this capacity, she worked for BPV as a Senior Quality Engineer. Ms. Wong may testify regarding any and all aspects of Bard's quality control and field assurance processes that are, or have been, in place for Bard's IVC filters. Ms. Wong may testify regarding Bard's processes and procedures for adverse complaint handling, complaint investigation, trending analysis, root cause analysis, data integrity audits, and design failure mode analysis relating to Bard's IVC filters.

Based on reports received by Bard, she may also testify regarding the rates of complications with Bard's IVC filters and analyses performed by Bard regarding adverse event rates. She may also provide testimony that was the subject of her previous deposition testimony.

John Worland

21605 Crestone Needles Drive
Parker, Colorado 80138

Subject Matter: Mr. Worland is a radiology technician in Colorado. He may testify about the matters that were the subject of his deposition.

Any witness identified by Plaintiffs.

1 **F. LIST OF EXHIBITS**

2 1. The parties have listed exhibits on their exhibit lists subject to pending
3 motions in limine and other rulings by the Court. By listing exhibits, the parties do not
4 contend that the exhibits are necessarily admissible and do not intend to waive any
5 objection they have to the admissibility of the same.

6 2. The parties have met and conferred on the issue of exchanging and
7 providing to the Courtroom Deputy Clerk with impeachment exhibits 48 hours in advance
8 of the trial. The parties agree they would like to provide any impeachment exhibits to the
9 Courtroom Deputy Clerk, 24 hours before their intended use.

10 3. As the Court has ordered in prior MDL trials, the parties agree to provide a
11 list of exhibits to be used with each witness at least 24 hours before the witness is called to
12 testify.

13 4. If the Court grants Defendants' Motion *in Limine* relating to Recovery
14 migration deaths, Defendants propose that the parties use the same redactions to exhibits
15 agreed to and approved by the Court in the *Jones* and *Hyde* trials.

16 5. The following Exhibit Lists are attached hereto: **Exhibit A** – Plaintiffs'
17 Exhibit List with Defendants' Objections; **Exhibit B** – Defendants' Additional Exhibit
18 List with Plaintiffs' and Defendants' Objections.

19 a. Defendants' Contention: Many of the documents listed as potential
20 exhibits were produced by Defendants subject to a Protective Order (Dkt. 268 and 269).
21 Throughout this litigation the parties have been filing and moving to seal certain
22 documents pursuant to that Order. However, the Protective Order does not cover the use
23 of documents as exhibits at trial. (*See*, Dkt. 268, Para, 28). The Court addressed this in the
24 prior bellwether trials and in its ruling on Bard's Motion for reconsideration. Pursuant to
25 the Court's ruling in Dkt. 12069, Defendants raise this issue to preserve it and are
26 prepared to address it during the Pretrial Conference. Until the exhibits are admitted,
27 Defendants do not know which exhibits, if any, they need to move to seal. Defendants
28 request that the exhibits be maintained by the Court reporter and not made available

publicly throughout the trial and that Defendants be given a reasonable time after the conclusion of the trial to determine whether they intend to file a motion to seal, and that the Court set a briefing schedule for a post-trial briefing schedule on a motion to seal, if Defendants determine that they intend to move to seal any of the admitted exhibits.

b. Plaintiffs' Contention: Plaintiffs disagree with this Defendants' Contention, and maintain their position that exhibits are public record at the time admitted into evidence, and that the Court need only adhere to its prior Order on these issues. *See* Doc. 14446. Further, Plaintiffs contend Local Rule 5.6 regards the pre-trial sealing of exhibits and has no application to the use of exhibits at trial.

As the Court explained in its Orders, “‘the release of information in open court is a publication of that information and . . . operates as a waiver of any rights a party had to restrict its future use.’” (Doc. 11642 at 2 (quoting *Carnegie Mellon Univ. v. Marvell Tech. Grp., Ltd.*, No. CIV.A. 09-290, 2013 WL 1336204, at *5 (W.D. Pa. Mar. 29, 2013); Doc. 12069 at 3; Doc. 14446.) The Court has explicitly held that trial exhibits are not subject to the protective order. Doc. 14446. To the extent an exhibit was not merely admitted into evidence but also was published or discussed in open court, the exhibit is no longer confidential, and Defendants have waived the right to have the exhibit sealed. *See In re Google Inc. Gmail Litig.*, No. 13-MD-02430-LHK, 2014 WL 10537440, at *6 (N.D. Cal. Aug. 6, 2014) (“[W]here, as here, the parties did not request closure of the courtroom . . . and the disclosures were not inadvertent, the Court will not permit an ex post facto redaction of statements made in open court[.]”); *Fleming v. Escort, Inc.*, No. CV 09-105-S-BLW, 2013 WL 1290418, at *4.

6. The following exhibits are admissible in evidence and may be marked in evidence by the Clerk:

a. Any exhibit listed in **Exhibits A and B** that is not objected to is agreed to by the parties as admissible.

7. As to the following exhibits, the parties have reached the following stipulations:

8. The following records are stipulated to be authentic and satisfy the business records exception, but the parties reserve all other available objections:

a. Plaintiffs' medical records and bills.

9. As to the following exhibits, the party against whom the exhibit is to be offered objects to the admission of the exhibit and offers the objection stated below:

a. Plaintiffs' Exhibits: See attached **Exhibit A**.

b. Defendants' Exhibits: See attached **Exhibit B**.

The parties shall submit their exhibit lists in writing, five days before trial, in a format to be designated by the Court at the Final Pretrial Conference, in WordPerfect® 9.0 format either by e-mail to Nancy_Outley@azd.uscourts.gov or on an IBM-compatible computer disk.

G. DEPOSITIONS TO BE OFFERED

The parties have included deposition designations subject to pending motions in limine and other rulings by the Court. By making those designations the parties do not contend that the testimony is necessarily admissible and do not intend to waive any objection they have to the admissibility of the same.

1. Deposition Designations:

Defendants' Position: Because of new issues raised by Plaintiffs regarding deposition designations and because of issues that occurred with the deposition designations played in the prior MDL trials, Defendants request that the parties provide depositions designations and the exhibits they intend to display at least 48 hours before the deposition designations are played, and that the completed transcript of the video to be played and copies of the exhibits as they will be displayed be provided at least 24 hours before the deposition designations are played.

Plaintiffs' Response: Plaintiffs do not agree that Defendants' proposal is reasonable or necessary. There is nothing about this trial, or the deposition designations alluded to by Defendants, that necessitates a departure from the process used in previous trials. Further, the notice requirements that Defendants propose would be unreasonably

burdensome, and do not reflect practical realities of trial preparation, in which decisions about specific exhibits, for example, are made more rapidly than what Defendants' proposal contemplates.

a. Deposition of Dr. Kalva:

Defendants' Position: As Defendants stated on the deposition submitted to the Court for review, Defendants object to plaintiff's use of the deposition of Dr. Kalva on the basis that Plaintiffs have not demonstrated that this expert witness is unavailable under Federal Rule of Civil Procedure 32(a)(4) or Federal Rule of Evidence 804.

Plaintiffs' Position: As Plaintiffs stated in the deposition submitted to the Court, Plaintiffs are only offering Dr. Kalva as a percipient witness and his role as the author of a relevant article relating to his personal experience with Bard filters. His testimony does not need to be treated any differently than that of other fact witnesses.

H. MOTIONS IN LIMINE (JURY TRIAL)

All motions *in limine* have been filed and fully briefed, with the exception of Plaintiffs' Motion *in Limine* No. 2, which Plaintiffs supplemented on April 8, 2019 (Doc. 16748) and to which Defendants are permitted, pursuant to the Court's Order of April 8, 2018 (Doc. 16749), to file a supplemental response by April 24, 2019. Those that have not yet been ruled on are set forth in Section I, below.

I. LIST OF PENDING MOTIONS

1. Plaintiffs' Motion *in Limine* No. 2: Vena Cava Size (Doc. 16578) (supplement filed on April 8, 2019 (Doc. 16748);
2. Plaintiffs' Motion *in Limine* No. 3 to Preclude Evidence of Unrelated Medical Conditions (Doc. 16577);
3. Plaintiffs' Motion *in Limine* No. 4: Bard's Internal Rates Based on Reporting Rates of Filter Complications (Doc. 16579);
4. Plaintiffs' Motion *in Limine* No. 5: Retrievable Filter Sales Versus SNF Filter Sales (Doc. 16580);

1 5. Plaintiffs' Motion *in Limine* No. 6: Social Security Disability Benefits
2 Which are Barred by Wisconsin's Collateral Source Rule (Doc. 16581);

3 6. Defendants' Motion *in Limine* No. 1 to Exclude Evidence of Recovery Filter
4 Cephalad Migration Deaths (Doc. 16575);

5 7. Defendants' Motion *in Limine* No. 2 to Exclude Evidence of FDA Warning
6 Letter (Doc. 16572);

7 8. Defendants' Motion *in Limine* No. 3 to Exclude Evidence of the Crisis
8 Communications Plan (Doc. 16573);

9 9. Defendants' Motion *in Limine* No. 4 Regarding a Patient at Dr. Muehrcke's
10 Hospital (Doc. 16574).

11 **J. PROCEDURES FOR EXPEDITING TRIAL**

12 The parties agree to the following procedures that might expedite trial to the extent
13 possible: (a) presenting stipulated summaries of work history and professional background
14 and qualifications of witnesses rather than using deposition excerpts. The parties agree to
15 meet and confer and at least 24 hours before a deposition is played to provide the
16 proposed summary to opposing counsel for review and approval; (b) stipulations on
17 authenticity and foundation; and (c) using the courtroom technology to expedite the
18 presentation of evidence. The parties will also contact Nancy Outley at 602-322-7645 to
19 arrange a time to visit the courtroom and examine its technology.

20 **K. ESTIMATED LENGTH OF TRIAL**

21 All times set forth by the parties below are approximate and given to the best of
22 counsels' ability. Nothing about these stated times is intended to limit the total time
23 available to either party in the event less time is used for one of the categories, as that time
24 will simply be reallocated to another category.

1 33 hours for Plaintiffs

2 1.5 hours opening statement

3 2.5 hours for closing, rebuttal and punitive damages

4 29 hours for direct and cross examination

5
6 These estimates are based on the Court's order (Doc. 12971) allocating 33 hours to
7 Plaintiffs. Plaintiffs believe that they may require additional time, and reserve the right to
8 make that request during trial.

9 30 hours for Bard

10 Bard objects to any additional time being added to the trial after the entry of this
11 Pretrial Order. In the previous MDL trials, Bard made strategic decisions based on the
12 time allocated by the Court from the very outset of trial. Those strategic decisions
13 included, but were not limited to, determining the amount of time to spend on the cross-
14 examination of several of the Plaintiffs' principal experts. The Defendants believe that the
15 Court's decision to afford the Plaintiffs additional time, while certainly within the Court's
16 discretion, unfairly penalized the Defendants for abiding by the limitations set by the
17 Court and caused prejudice (particularly given how the Plaintiffs squandered the time
18 originally provided with repetitive questioning and the frequent focus on collateral issues).
19 *See, e.g., Amarel v. Connell*, 102 F.3d 1494, 1514 (9th Cir. 1996), *as amended* (Jan. 15,
20 1997); see also *Gen. Signal Corp. v. MCI Telecommunications Corp.*, 66 F.3d 1500, 1509
21 (9th Cir. 1995) (noting unfairness to defendant in providing Plaintiffs additional time after
22 defendant had already made strategic decisions based on the court's original allocation).

23 **L. JURY DEMAND**

24 A jury trial has been requested.

25 The parties stipulate that the request was timely and properly made.
26
27
28

1 **M. JOINT PROPOSED JURY INSTRUCTIONS, JOINT PROPOSED**
 2 **VOIR DIRE QUESTIONS, AND PROPOSED FORMS OF VERDICT**
 3 **FOR JURY TRIALS**

4 The Joint Proposed Jury Instructions and Proposed Forms of Verdict shall be filed
 5 contemporaneously with this Final Proposed Pretrial Order. As Case Management Order
 6 No. 43 directs, the parties' Proposed Jury Instructions will include an instruction
 7 concerning Ms. Tinlin's remote participation in the trial. Because Case Management
 8 Order No. 43 also provides that voir dire shall be limited to follow-up questions to the
 9 jury questionnaire, the parties are not submitting separate or additional voir dire questions.

10 **N. CERTIFICATIONS**

11 The undersigned counsel for each of the parties in this action does hereby certify
 12 and acknowledge the following:

- 13 1. All discovery has been completed.
- 14 2. The identity of each witness has been disclosed to opposing counsel.
 15 Defendants cannot stipulate to this and incorporate their objections to Plaintiffs' multiple
 16 experts in Section E.
- 17 3. Each exhibit listed herein: (1) is in existence; (2) is numbered; and (3) will
 18 be disclosed and shown to opposing counsel at a later date mutually agreeable to the
 19 parties. The parties agree demonstrative exhibits will be exchanged or made available for
 20 inspection at a later date agreed to by the parties.
- 21 4. The parties agree and stipulate that the statement of the case used in the
 22 juror questionnaire approved by the Court is to be used as the parties' joint statement of
 23 the case.
- 24 5. The parties have complied in all respects with the mandates of the Court's
 25 Rule 16 Scheduling Order and Order Setting Final Pretrial Conference.
- 26 6. The parties have made all of the disclosures required by the Federal Rules of
 27 Civil Procedure (unless otherwise previously ordered to the contrary).

1 7. The parties acknowledge that once this Proposed Final Pretrial Order has
2 been signed and lodged by the parties, no amendments to this Order can be made without
3 leave of Court.

4 **O. INFORMATION FOR COURT REPORTER**

5 In order to facilitate the creation of an accurate record, the Parties will file a
6 “Notice to Court Reporter” **one week before trial** containing the following information
7 that may be used at trial:

- 8 1. Proper names, including those of witnesses.
- 9 2. Acronyms.
- 10 3. Geographic locations.
- 11 4. Technical (including medical) terms, names or jargon.
- 12 5. Case names and citations.
- 13 6. Pronunciation of unusual or difficult words or names.

BEUS GILBERT PLLC

NELSON MULLINS RILEY &
SCARBOROUGH LLP

By: s/ Mark S. O'Connor

Mark S. O'Connor
BEUS GILBERT PLLC
701 N. 44th Street
Phoenix, AZ 85008

Ramon Rossi Lopez
LOPEZ MCHUGH LLP
(admitted *pro hac vice*)
CA Bar No. 86361
100 Bayview Circle, Suite 5600
Newport Beach, California 92660

Attorneys for Plaintiffs

By: s/ Richard B. North, Jr.

Richard B. North, Jr.
(admitted *pro hac vice*)
Georgia Bar No. 545599
James F. Rogers
(admitted *pro hac vice*)
South Carolina Bar. No. 012942
Elizabeth C. Helm
(admitted *pro hac vice*)
Georgia Bar No. 289930
Matthew B. Lerner
(admitted *pro hac vice*)
Georgia Bar No. 446986
201 17th Street, NW / Suite 1700
Atlanta, GA 30363

James R. Condo
SNELL & WILMER LLP
One Arizona Center
400 E. Van Buren, Suite 1900
Phoenix, AZ 85004-2202

*Attorneys for C. R. Bard, Inc. and Bard
Peripheral Vascular, Inc.*

Based on the foregoing,

IT IS ORDERED that this Proposed Final Pretrial Order jointly submitted by the parties is hereby **APPROVED** and **ADOPTED** as the official Pretrial Order of this Court.

DATED this ____ day of _____, 2019.

David G. Campbell
United States District Judge